

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT
AGENDA
ROSE ROOM
CREEKMORE PARK COMMUNITY CENTER
5:30 P.M.
FEBRUARY 11, 2014**

I. ROLL CALL

II. APPROVAL OF MINUTES FROM JANUARY 14, 2014

III. STAFF COMMENTS AND PROCEDURES

1. Final Plat – The Borough at Middleton – Lots 1-36 & Tract A– Mickle-Wagner-Coleman
2. Final Plat – Huntington Chase – Lots 1 & 2 – Mickle-Wagner-Coleman
3. Preliminary Plat – Cancer Support Foundation Addition – Lots 1A & 1B – Brixey Engineering
4. Final Plat – Cancer Support Foundation Addition – Lots 1A & 1B – Brixey Engineering
5. Home Occupation #1-2-14; A request by Stacey Mason for a home occupation for a custom t-shirt design business located at 1900 South “Z” Street – Apt. #1.

**RECESS PLANNING COMMISSION
CONVENE BOARD OF ZONING ADJUSTMENT**

6. Variance #7-2-14; A request by Al Prieur, agent for Bear Creek Leasing, for a variance from 50 feet to 25 feet exterior side yard setback adjacent to South “D” and South “E” Streets located at 506 South 6th Street.
7. Variance #8-2-14; A request by Chris Trager, agent for Clear Channel Outdoor, for a variance from 25 feet to 22 feet front yard setback located at 1100 South “D” Street.

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT
MINUTES
ROSE ROOM
CREEKMORE PARK COMMUNITY CENTER
5:30 PM
JANUARY 14, 2014**

On roll call, the following Commissioners were present: Brandon Cox, Marshall Sharpe, Vickie Newton, Michelle Hood, Bob Cooper, Jr., Richard Spearman, Don Keesee and Rett Howard. Commissioner Jennifer Parks was absent.

Chairman Sharpe called for the vote on the minutes from the December 10, 2013, Planning Commission meeting. Motion was made by Commissioner Howard, seconded by Commissioner Hood and carried unanimously to approve the minutes as written.

Mr. Wally Bailey spoke on the procedures.

- 26. Variance #3-1-14; A request by Ricky Hill, agent for Glicenia Logan, for a variance from 60 feet to 30.94 feet minimum lot width at building line located at 1608 Dallas Street.**

Mr. Bailey noted that the applicant has formally requested in writing that this item be withdrawn from the agenda.

Mr. Keith Kestner on behalf of Ricky Hill was present to request this item be withdrawn.

No one was present to speak either in favor or in opposition to this variance request.

Prior to the vote on this request, Chairman Sharpe recessed the Planning Commission and convened the Board of Zoning Adjustment. The vote was 8 in favor and 0 opposed to approve the withdrawal of this item from the agenda.

**RECESS BOARD OF ZONING ADJUSTMENT
RECONVENE PLANNING COMMISSION**

- 1. Preliminary Plat – Leigh Ridge Business Park, Lots 1-3 – Morrison-Shipley Engineers**

Ms. Brenda Andrews read the staff report indicating that the proposed uses associated with this preliminary plat will be retail and commercial uses.

Mr. Travis Brisendine was present to speak on behalf of this request.

No one was present to speak in opposition to the preliminary plat.

Chairman Sharpe then called for the vote on the preliminary plat. Motion was made by Commissioner Cox, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the developer agreeing to meet all franchise and City utility easement requirements and compliance with the city's Subdivision Design and Improvement Standards Specifications for Public Works Construction.

Chairman Sharpe then called for the vote on the preliminary plat as amended. The vote was 8 in favor and 0 opposed.

2. Preliminary Plat – Century Drive Addition, Lots 1-3 – Mickle-Wagner-Coleman

3. Final Plat – Century Drive Addition, Lot 1 – Mickle-Wagner-Coleman

Ms. Brenda Andrews read the staff reports indicating that the proposed uses associated with these plats will be retail and commercial uses.

No one was present to speak in opposition to these plats.

2. Preliminary Plat – Century Drive Addition, Lots 1-3 – Mickle-Wagner-Coleman

Motion was made by Commissioner Howard, seconded by Commissioner Cox and carried unanimously to amend this request to make approval subject to the developer agreeing to meet all franchise and City utility easement requirements and compliance with the city's Subdivision Design and Improvement Standards Specifications for Public Works Construction.

Chairman Sharpe then called for the vote on the preliminary plat as amended. The vote was 8 in favor and 0 opposed.

3. Final Plat – Century Drive Addition, Lot 1 – Mickle-Wagner-Coleman

Motion was made by Commissioner Howard, seconded by Commissioner Newton and carried unanimously to amend this request to make approval subject to all required approvals of the plat and the affixing of all required signatures on the original tracing and other copies and associated documents prior to the plat being filed with the county recorder.

Chairman Sharpe then called for the vote on the final plat as amended. The vote was 8 in favor and 0 opposed.

- 4. A request by Al Prieur, agent for Jeff Fenwick, for a Master Land Use Plan Amendment from General Commercial to Residential Attached located at 4615 Old Greenwood Road. (companion item to items #5 & #6)**
- 5. Rezoning #1-1-14; A request by Al Prieur, agent for Jeff Fenwick, for a zone change from Commercial Heavy Special (C-5-SPL) to Residential Multifamily High Density (RM-4) by Classification located at 4615 Old Greenwood Road. (companion item to items #4 & #6)**
- 6. A request by Al Prieur, agent for Jeff Fenwick, for development plan approval for apartments located at 4615 Old Greenwood Road. (companion item to items #4 & #5)**

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to allow a multifamily development consisting of two six unit apartment complexes.

Ms. Rice noted that a neighborhood meeting was held on Monday, November 4, 2013, on site with no neighboring property owners in attendance.

Mr. Al Prieur was present to speak on behalf of these requests.

No one was present to speak in opposition to the requests.

Mr. Bailey stated that the development plan does not specify the type of materials to be used on this development. Mr. Prieur stated that the materials to be used would be brick/native stone and wood paneling.

Following a discussion by the Commission, Chairman Sharpe called for the vote on these items.

- 4. A request by Al Prieur, agent for Jeff Fenwick, for a Master Land Use Plan Amendment from General Commercial to Residential Attached located at 4615 Old Greenwood Road. (companion item to items #5 & #6)**

Chairman Sharpe called for the vote on the Master Land Use Plan Amendment. The vote was 8 in favor and 0 opposed.

- 5. Rezoning #1-1-14; A request by Al Prieur, agent for Jeff Fenwick, for a zone change from Commercial Heavy Special (C-5-SPL) to Residential Multifamily High Density (RM-4) by Classification located at 4615 Old Greenwood Road. (companion item to items #4 & #6)**

Chairman Sharpe called for the vote on the rezoning request. The vote was 8 in favor and 0 opposed.

- 6. A request by Al Prieur, agent for Jeff Fenwick, for development plan approval for apartments located at 4615 Old Greenwood Road. (companion item to items #4 & #5)**

Chairman Sharpe called for the vote on the development plan. Motion was made by Commissioner Cox, seconded by Commissioner Newton and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan. The exterior building materials shall be brick, native stone and wood paneling as shown on the plan. If the materials differ from what are shown on the submitted elevation drawings, planning commission approval of a revised development plan will be required.
- Approval of the master land use plan amendment and rezoning requests by the Board of Directors.
- Storm water management shall conform to the 2011 Storm Drainage Standards.

Chairman Sharpe then called for the vote on the development plan as amended. The vote was 8 in favor and 0 opposed.

- 7. Rezoning #2-1-14; A request by Briana Rogers, agent for Dario Espina and King Realty Group Partners, LLC for a zone change from Transitional (T) to Commercial Light (C-2) by Extension located at 3900 & 3920 Rogers Avenue.**

Ms. Brenda Andrews read the staff report indicating that the purpose of the rezoning request is to allow for the operation of a salon and spa in a vacant commercial building located at 3900 Rogers Avenue.

Ms. Andrews stated that a neighborhood meeting was held on Friday, January 3, 2014, at 3:00 p.m. on site at 3900 Rogers Avenue with no neighboring property owners in attendance. Ms. Andrews noted that the request to rezone the property was initiated by Ms. Rogers to allow her to operate a salon and spa which is currently not permitted in a Transitional zoning district. Ms. Andrews also noted that the applicant is not proposing any new construction or additions to the existing one-story structure and also no new construction or additions are being proposed for 3920 Rogers Avenue, which is the location of King Realty.

Ms. Briana Rogers was present to speak on behalf of this request.

No one was present to speak in opposition to this request.

Motion was then made by Commissioner Keesee, seconded by Commissioner Spearman and carried unanimously to amend this request to make approval subject to development plan approval by the Planning Commission prior to the issuance of a building permit for any new buildings or any new additions to the existing buildings.

Chairman Sharpe then called for the vote on the rezoning request as amended. The vote was 8 in favor and 0 opposed.

8. Conditional Use #1-1-14; A request by Dave Reynolds, agent for the City of Fort Smith, for a conditional use for a communications tower located at 1799 South 74th Street.

Mr. Wally Bailey read the staff report indicating that the purpose of this conditional use request is to allow the construction of a commercial communication tower at the southern end of Carol Ann Cross Park next to the restroom facility and parking location.

Mr. Mike Alsup, Director of the City of Fort Smith Parks Department and Mr. Dave Reynolds representing Smith Communications, LLC was present to speak on behalf of this request.

Commissioner Cox questioned Mr. Alsup as to other possible locations that were discussed for placement of the tower. Mr. Alsup stated that he felt this was a better location due to the fact that it is less visible since it is away from the road and less visible to the patrons of the park.

Commissioner Spearman questioned if the Commission would go forward with voting on this request without the Parks Commission approval. Mr. Alsup noted that the Parks Commission is simply an advisory board to the Board of Directors.

Commissioner Keesee noted that technically the Parks Commission had denied the request by a vote of 2 to 2 with the Chairman voting which created the tie due to the fact that a quorum was not present.

Commissioner Howard questioned Mr. Alsup as to where the funds that would be created with the leasing of this tower would be spent. Mr. Alsup noted that the money for the lease of the tower would be set aside and utilized for maintenance and improvements to the Park.

Mr. Chuck Fawcett was present to speak on behalf of this request. Mr. Fawcett stated that the residents of the neighborhood would prefer the tower being placed farther into the park away from children and the road.

Mr. Tim Hern, Director of Fort Smith EMS, also spoke on behalf of this request. Mr. Hern noted that the mobile data terminals they use to transmit vitals to the hospital is currently not available to the residents in this area in case of an emergency. He noted that this is the largest area in Fort Smith with no coverage.

Mr. Kent Blochberger, 3914 South 33rd Street, representing the Methodist Health & Rehab at 1915 South 74th Street was present to voice his objections to the proposed location of this tower. Mr. Blochberger stated that there are 125-130 residents that currently reside at Methodist Health & Rehab and they would like it to be moved closer to South 74th Street.

Mr. Mark Myers, 1912 Saint Francis Crest, spoke in opposition to this request. Mr. Myers stated that he did not feel that a communication tower belongs in a park and would take away from the aesthetics of the park.

Mr. Lee Merry who resides on Horan Drive, addressed the Commission with his concerns relative to lighting being placed on the top of the tower.

Commissioner Sharpe noted that he feels this proposal had not been handled as well as it could have been.

Commissioner Howard stated the he felt this needed to be voted on tonight and does not feel like it would harm the Park in any way.

Following a discussion by the Commission, motion was made by Commissioner Howard, seconded by Commissioner Hood and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the approved development plan and the following comments:
- The fence installed around the site shall be opaque and be a minimum of eight (8) feet in height.

- No lights, signals or illumination shall be permitted on the tower.
- The tower design shall be of the flag pole design (slick stick) as shown in the plans and shall not be retrofitted in the future with exterior antennas or cables (arms and branches).

Chairman Sharpe then called for the vote on the conditional use request as amended. The vote was 8 in favor and 0 opposed.

- 9. Subdivision Variance #1-1-14; A request by Keith Kestner, agent for R. Scott Hembree, H. Lawson Hembree and Susanna O'Sullivan, for a subdivision variance from private access easement requirements for a driveway located at 3108 & 3112 Park Avenue. (companion item to item #24)**
- 24. Variance #1-1-14; A request by Keith Kestner, agent for R. Scott Hembree, H. Lawson Hembree and Susanna O'Sullivan, for a variance from 30 feet to 10 feet interior yard setback and from 60 feet to 28.36 feet minimum lot width at building line located at 3108 Park Avenue. (companion item to item #9)**

Ms. Brenda Andrews read the staff reports indicating that the purpose of the subdivision variance is to allow the existing 18' wide asphalt driveway to continue to serve as an access easement for the existing single family house and multifamily development. She stated that the zoning variance requests would facilitate the replat of an existing multifamily development and two single family residences into three lots. Ms. Andrews noted that the property is currently unplatted. Ms. Andrews also noted that no new development is being proposed.

No one was present to speak in opposition to these requests.

RECESS PLANNING COMMISSION RECONVENE BOARD OF ZONING ADJUSTMENT

- 24. Variance #1-1-14; A request by Keith Kestner, agent for R. Scott Hembree, H. Lawson Hembree and Susanna O'Sullivan, for a variance from 30 feet to 10 feet interior yard setback and from 60 feet to 28.36 feet minimum lot width at building line located at 3108 Park Avenue.**

Chairman Sharpe called for the vote on the variance request. The vote was 8 in favor and 0 opposed.

RECESS BOARD OF ZONING ADJUSTMENT RECONVENE PLANNING COMMISSION

9. **Subdivision Variance #1-1-14; A request by Keith Kestner, agent for R. Scott Hembree, H. Lawson Hembree and Susanna O'Sullivan, for a subdivision variance from private access easement requirements for a driveway located at 3108 & 3112 Park Avenue (companion item to item #24)**

Chairman Sharpe called for the vote on the subdivision variance. The vote was 8 in favor and 0 opposed.

10. **A request by Dubin Singer, P.C., et al, agent for C&C Kelley Properties, LLC and Ninh Nguyen, for development plan approval for a neighborhood store located at 1908 & 1920 Dallas Street. (companion item to item #27)**
27. **Variance #4-1-14; A request by Dubin Singer, P.C., et al, agent for C&C Kelley Properties, LLC and Ninh Nguyen, for a variance from 36 to 20 minimum number of required parking spaces and interior landscaping requirements located at 1908 & 1920 Dallas Street. (companion item to item #10)**

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to allow for the development of an 8,320 square foot Family Dollar Store. Ms. Rice noted that the proposed project would have 20 parking spaces with parking lot screening and perimeter landscaping and that the companion item is for a variance request from the minimum number of parking spaces and for the omission of interior landscaping for vehicular use areas.

Ms. Rice stated that a neighborhood meeting was held on Tuesday, January 7, 2014, onsite with two (2) surrounding property owners in attendance. Ms. Rice noted that neither property owner was opposed to the request; however, one property owner had concerns relative to lighting and noise during deliveries.

Mr. Chris Conley 700 South 21st Street, was present to speak on behalf of this request. Mr. Conley stated that he had met with and resolved Mr. David Armbruster's concerns relative to lighting and noise.

Mr. B. J. Phillips, project architect, addressed the Commission. Mr. Phillips stated that a cedar shadow box style fence would be constructed along the western boundary line.

Following a discussion by the Commission, Chairman Sharpe called for the vote on these items.

RECESS PLANNING COMMISSION RECONVENE BOARD OF ZONING ADJUSTMENT

27. **Variance #4-1-14; A request by Dubin Singer, P.C., et al, agent for C&C Kelley Properties, LLC and Ninh Nguyen, for a variance from 36 to 20 minimum number of required parking spaces and interior landscaping requirements located at 1908 & 1920 Dallas Street. (companion item to item #10)**

Chairman Sharpe called for the vote on the variance request. Motion was made by Commissioner Howard, seconded by Commissioner Cox and carried unanimously to amend this request to make approval subject to compliance and approval of the development plan.

Chairman Sharpe then called for the vote on the variance request as amended. The vote was 8 in favor and 0 opposed.

RECESS BOARD OF ZONING ADJUSTMENT RECONVENE PLANNING COMMISSION

10. A request by Dubin Singer, P.C., et al, agent for C&C Kelley Properties, LLC and Ninh Nguyen, for development plan approval for a neighborhood store located at 1908 & 1920 Dallas Street (companion item to item #27)

Chairman Sharpe called for the vote on the development plan. Motion was made by Commissioner Cox, seconded by Commissioner Keesee and carried unanimously to amend the request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan and with the following comments:
- A final landscape plan shall be submitted for review and must comply with the UDO.
- All site lighting shall be shielded and comply with Section 27-602-5 of the UDO.
- Ground signs shall be limited to the monument sign shown on the submitted development plan.
- A cedar shadowbox style fence shall be installed along the western boundary line.

Chairman Sharpe then called for the vote on the development plan as amended. The vote was 8 in favor and 0 opposed.

11. A request by Brandon Woodrome, agent for Ton Hoang Tran, for development plan approval for a multifamily development located at 1627 Grand Avenue.

Ms. Brenda Andrews read the staff report indicating that the purpose of this request is to allow a multifamily development consisting of three (3) duplexes.

Ms. Andrews stated that a neighborhood meeting was held on Thursday, January 2, 2014, at 3201 Rogers Avenue with two (2) residents in attendance who had no objections to the proposed project.

Mr. Brandon Woodrome was present to speak on behalf of this request.

No one was present to speak in opposition to the request.

Motion was then made by Commissioner Keesee, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan and with the following comments:
- All site lighting shall be shielded and comply with Section 27-602-5 of the UDO.
- Any future signage will require staff review and permitting.
- Modification of the turnaround to provide easier maneuvering.
- A sidewalk shall be installed on North 17th Street.
- Drainage plans shall be submitted for engineering department review and approval.

Chairman Sharpe then called for the vote on the development plan request as amended. The vote was 8 in favor and 0 opposed.

12. A request b Scott Branton, agent for Cancer Support Foundation, for a Master Land Use Plan Amendment from Residential Detached to Residential Attached at 1412 South 34th Street. (companion item to items #13 & #14)

13. Rezoning #3-1-14; A request by Scott Brnton, agent for Cancer Support Foundation, for a zone change from Transitional (T) to Residential Multifamily Medium Density (RM-3) by Extension located at 1412 South 34th Street. (companion item to items #12 & #14)

14. A request by Scott Branton, agent for Cancer Support Foundation, for development plan approval for a multifamily development at 1412 South 34th Street. (companion item to items #12 & #13)

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to allow for the development of a gated multifamily development consisting of five (5) duplexes.

Ms. Andrews stated that a neighborhood meeting was held on Monday, January 6, 2014, at 6:30 p.m. at the Fort Smith Library, 3201 Rogers Avenue with no neighboring property owners in attendance. Ms. Andrews noted that based on an e-mail from Scott Branton on December 4th, the developer, Rick Griffin and architect Scott Branton met with three (3) surrounding property owners, including Mr. & Mrs. Wayne King and David Cravens to discuss the project and these property owners expressed support for the project.

Mr. Rick Griffin was present to speak on behalf of these requests.

No one was present to voice their opposition.

Ms. Peggy Yarbrough, property manager for the Oakwood Gardens apartments, addressed the Commission. Ms. Yarbrough advised the Commission that they were not notified by letter. It was noted that the letters are mailed to the property owner of record as listed with the Sebastian County Tax Assessor.

Following a discussion by the Commission, Chairman Sharpe called for the vote on these requests.

12. A request by Scott Branton, agent for Cancer Support Foundation, for a Master Land Use Plan Amendment from Residential Detached to Residential Attached at 1412 South 34th Street. (companion item to items #13 & #14)

Chairman Sharpe called for the vote on the Master Land Use Plan Amendment. The vote was 8 in favor and 0 opposed.

13. Rezoning #3-1-14; A request by Scott Brnton, agent for Cancer Support Foundation, for a zone change from Transitional (T) to Residential Multifamily Medium Density (RM-3) by Extension located at 1412 South 34th Street. (companion item to items #12 & #14)

Chairman Sharpe called for the vote on the rezoning request. Motion was made by Commissioner Cox, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the approval of the development plan.

Chairman Sharpe then called for the vote on the rezoning request as amended. The vote was 8 in favor and 0 opposed.

14. A request by Scott Branton, agent for Cancer Support Foundation, for development plan approval for a multifamily development at 1412 South 34th Street. (companion item to items #12 & #13)

Chairman Sharpe called for the vote on the development plan. Motion was made by Commissioner Howard, seconded by Commissioner Keesee and carried unanimously to amend this request to make approval subject to the following:

- Approval of the master land use plan amendment and rezoning requests by the Board of Directors.
- Approval is based on the submitted development plan and any Planning Commission changes.

- A perimeter sidewalk shall be placed adjacent to the right-of-way line along South 34th Street or payment in lieu of shall be approved by the Engineering Department.
- All trash receptacles shall be completely screened in accordance with Section 27-602-4-D(6) of the UDO.
- Storm water management, including detention and water quality treatment and drainage improvements with easement dedication will be required and approved by the City Engineering Department.
- An upgraded water line extension to 8" shall be installed and approved by the Utility Department.

Chairman Sharpe then called for the vote on the development plan as amended. The vote was 8 in favor and 0 opposed.

Commissioner Cooper commended the developer on this proposed project noting the site to be challenging to develop and stating that he felt this development would be a great addition to the neighborhood.

- 15. Rezoning #4-1-14; A request by Travis Brisendine, agent for Leigh Ridge, LLC, for a zone change from Industrial Light (I-1) to Commercial Heavy (C-5) by Classification located at 5400, 5401 & 5451 Phoenix Avenue. (companion item to items #16, #17 & #29)**
- 16. A request by Travis Brisendine, agent for Leigh Ridge, LLC, for approval of a development plan for a beer, wine and liquor store located at 5401 Phoenix Avenue. (companion item to items #15, #17 & #29)**
- 17. A request by Travis Brisendine, agent for Leigh Ridge, LLC, for deferral of a development plan located at 5400 & 5451 Phoenix Avenue. (companion item to items #15, #16 & #29)**
- 29. Variance #6-1-14; A request by Travis Brisendine, agent for Leigh Ridge, LLC, for a variance from 10 feet to 5 feet minimum width of landscaping and no trees (Sec. 27-602-3(B)(C) located at 5401 Phoenix Avenue. (companion item to items #15, #16 & #17)**

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to allow for the development of a beer, wine and liquor store and other future commercial development. Ms. Rice noted that the development plan deferral for the property located at 5400 and 5451 Phoenix is being requested due to the fact that the developer does not have a defined plan for these sites. Ms. Rice also noted that the variance request would allow for the width of the perimeter landscaping to be 5 feet wide instead of the required

10 feet wide and a landscape buffer with only shrubs and no trees in the perimeter landscaping.

Mr. Travis Brisendine was present to speak on behalf of these requests.

No one was present to speak in opposition.

Following a discussion by the Commission, Chairman Sharpe called for the vote on the requests.

RECESS PLANNING COMMISSION RECONVENE BOARD OF ZONING ADJUSTMENT

- 29. Variance #6-1-14; A request by Travis Brisendine, agent for Leigh Ridge, LLC, for a variance from 10 feet to 5 feet minimum width of landscaping and no trees (Sec. 27-602-3(B)(C) located at 5401 Phoenix Avenue. (companion item to items #15, #16 & #17)**

Chairman Sharpe called for the vote on the variance request. Motion was made by Commissioner Spearman, seconded by Commissioner Hood and carried unanimously to amend this request to make approval subject to the following:

- Shrubs shall have a maximum height of 2' to 4'.
- Small trees or crepe myrtles with root systems that will not be invasive or destructive to the retaining wall shall be considered.

Chairman Sharpe then called for the vote on the variance request as amended. The vote was 8 in favor and 0 opposed.

RECESS BOARD OF ZONING ADJUSTMENT RECONVENE PLANNING COMMISSION

- 15. Rezoning #4-1-14; A request by Travis Brisendine, agent for Leigh Ridge, LLC, for a zone change from Industrial Light (I-1) to Commercial Heavy (C-5) by Classification located at 5400, 5401 & 5451 Phoenix Avenue. (companion item to items #16, #17 & #29)**

Chairman Sharpe called for the vote on the rezoning request. The vote was 8 in favor and 0 opposed. This rezoning request was approved subject to approval of a development plan at 5401 Phoenix and a deferral of a development plan located at 5400 & 5451 Phoenix Avenue.

- 16. A request by Travis Brisendine, agent for Leigh Ridge, LLC, for approval of a development plan for a beer, wine and liquor store located at 5401 Phoenix Avenue. (companion item to items #15, #17 & #29)**

Chairman Sharpe called for the vote on the development plan. Motion was made by Commissioner Howard, seconded by Commissioner Keesee and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan with the following conditions:
- All trash receptacles shall be completely screened in accordance with Section 27-602-4(C)(4) of the UDO.
- All proposed signs shall comply with the Phoenix Avenue Overlay District standards outlined in Section 27-440-B of the UDO.
- All site lighting shall be shielded and comply with Section 27-602-5 of the UDO.

Chairman Sharpe then called for the vote on the development plan as amended. The vote was 8 in favor and 0 opposed.

17. A request by Travis Brisendine, agent for Leigh Ridge, LLC, for deferral of a development plan located at 5400 & 5451 Phoenix Avenue. (companion item to items #15, #16 & #29)

Chairman Sharpe called for the vote on the development plan deferral. The vote was 8 in favor and 0 opposed.

18. A request by Brett Abbott, agent for Cliff Cabaness, for a Master Land Use Plan Amendment from Open Space to Neighborhood Commercial located at 4401 Massard Road. (companion item to items #19 & #20)

19. Rezoning #5-1-14; A request by Brett Abbott, agent for Cliff Cabaness, for a zone change from Residential Single Family Duplex Low/Medium Density (RSD-2) to Commercial Light (C-2) by Classification located at 4401 Massard Road. (companion item to items #18 & #20)

20. A request by Brett Abbott, agent for Cliff Cabaness, for deferral of a development plan for a commercial development located at 4401 Massard Road. (companion item to items #18 & #19)

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to allow the developer to zone the property commercial to sell. The developer has noted that they do not have any specific development plans at this time. Ms. Andrews stated that staff believes a more appropriate approach to a rezoning application would be a Planned Zoning District (PZD). Mr. Andrews noted that this process would allow some of the potentially detrimental land uses to be eliminated and allow other concerns to be

addressed such as additional buffering next to the neighborhoods, as well as enhanced design along the Massard Road corridor.

Ms. Andrews noted that staff discovered an error in the Master Land Use Plan classification. The application indicated the existing Master Land Use Plan classification is open space but it is open space and residential detached and the residential detached area was not shown nor was it advertised as a change to the Master Land Use Plan map in the required public notices and advertisements. Ms. Andrews stated that after discussion if the Planning Commission wants to consider approval of the Master Land Use Plan Amendment, staff is suggesting this item be tabled so that corrections can be made to the application and the required public notices and advertisements.

Ms. Andrews stated that a neighborhood meeting was held on Thursday, December 26, 2013, at 3:30 p.m. at the Fort Smith Public Library (Dallas Branch) with fourteen (14) neighboring property owners in attendance.

Commissioner Howard stated that he would be abstaining from voting on these items.

Mr. Tim Risley was present to speak on behalf of these requests. Mr. Risley stated that he felt a Planned Zoning District was an unnecessary step. Mr. Risley stated that the developer plans on building a home behind this development.

Ms. Sara Edmiston, 8404 Hannah Court, Mr. Jerry Horne, 4100 Hunter Way, Mr. Mike Stephens, 8600 Maelin Court and Mr. Jim Post, 5101 Massard Road spoke in opposition to these requests citing their concerns relative to lighting, noise and the potential uses that could be allowed in a Commercial-2 zoning classification that would be detrimental to the neighborhood.

Following a discussion by the Commission, the applicant agreed to remove the Residential Detached portion of the Master Land Use Plan Amendment request.

Chairman Sharpe then called for the vote on these requests.

18. A request by Brett Abbott, agent for Cliff Cabaness, for a Master Land Use Plan Amendment from Open Space to Neighborhood Commercial located at 4401 Massard Road.

Motion was made by Commissioner Keesee, seconded by Commissioner Cooper and carried unanimously to amend this request to make approval subject to the removal of the Residential Detached portion of the property.

Chairman Sharpe then called for the vote on the Master Land Use Plan as amended. The vote was 7 in favor, 0 opposed and 1 abstention (Howard).

19. Rezoning #5-1-14; A request by Brett Abbott, agent for Cliff Cabaness, for a zone change from Residential Single Family Duplex Low/Medium Density (RSD-2) to

**Commercial Light (C-2) by Classification located at 4401 Massard Road.
(companion item to items #18 & #20)**

Chairman Sharpe called for the vote on the rezoning request. The vote was 4 opposed, 3 in favor and 1 abstention (Howard).

- 20. A request by Brett Abbott, agent for Cliff Cabaness, for deferral of a development plan for a commercial development located at 4401 Massard Road. (companion item to items #18 & #20)**

Chairman Sharpe called for the vote on the deferral of the development plan. The vote was 5 opposed, 2 in favor and 1 abstention (Howard).

- 21. Rezoning #6-1-14; A request by Mickle-Wagner-Coleman, Inc., agent for Brad & Kristi Albert, for a zone change from Not Zoned to Industrial Light (I-1) by Classification at 8201 & 8205 Veterans Avenue. (companion item to items #22 & #23)**

- 22. A request by Mickle-Wagner-Coleman, Inc., agent for Brad & Kristi Albert, for approval of a development plan for a contractor office located at 8201 Veterans Avenue. (companion item to items #21 & #23)**

- 23. A request by Mickle-Wagner-Coleman, Inc., agent for Brad & Kristi Albert, for deferral of a development plan located at 8205 Veterans Avenue. (companion item to items #21 & #22)**

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to facilitate the development of a contractor's office. Ms. Rice noted that a development plan deferral for Lot 2, which consists of an existing warehouse and 3.78 acres is being requested due to the fact that the developer does not have a defined plan.

Ms. Rice stated that a neighborhood meeting was held on Friday, January 3, 2014, at 2:00 p.m. at 7020 Taylor Boulevard with no neighboring property owners in attendance.

Mr. Pat Mickle was present to speak on behalf of these requests.

No one was present to speak in opposition to these requests.

Chairman Sharpe then called for the vote on these requests.

- 21. Rezoning #6-1-14; A request by Mickle-Wagner-Coleman, Inc., agent for Brad & Kristi Albert, for a zone change from Not Zoned to Industrial Light (I-1) by Classification at 8201 & 8205 Veterans Avenue. (companion item to items #22 & #23)**

Chairman Sharpe called for the vote on the rezoning request. The vote was 8 in favor and 0 opposed. The rezoning request was approved subject to development plan approval.

22. A request by Mickle-Wagner-Coleman, Inc., agent for Brad & Kristi Albert, for approval of a development plan for a contractor office located at 8201 Veterans Avenue. (companion item to items #21 & #23)

Chairman Sharpe called for the vote on the development plan. Motion was made by Commissioner Cox, seconded by Commissioner Spearman and carried unanimously to amend this request to make approval subject to the following:

- All construction must be built in accordance with the submitted development plan and any Planning Commission amendments.
- Public water line extension and installation of a fire hydrant along Veterans Avenue beginning at Wildcat Drive shall be required and approved by the City Utility Department and meet the minimum design standards for commercial development.
- All easement dedication for the sanitary sewer system shall meet the minimum development design standards. The proposed 20 feet sanitary sewer easement must be 25 feet in width and be approved by the City Utility Department.
- The portion of existing sanitary sewer located under the existing warehouse building shall require relocation and dedication of easement that is approved by the City Utility Department.
- Variance approval by the Chaffee Design Review Committee to allow the use of cementitious siding and to eliminate the parking lot screening on the northern property line.
- The shared driveway shall comply with the UDO shared driveway requirements for non-residential uses.
- Signs shall comply with the Chaffee Crossing Design Guidelines and the Fort Smith Unified Development Ordinance.
- Outdoor lighting shall comply with the Chaffee Crossing Design Guidelines and the Fort Smith Unified Development Ordinance.

Chairman Sharpe then called for the vote on the development plan as amended. The vote was 8 in favor and 0 opposed.

23. A request by Mickle-Wagner-Coleman, Inc., agent for Brad & Kristi Albert, for deferral of a development plan located at 8205 Veterans Avenue. (companion item to items #21 & #22)

Chairman Sharpe called for the vote on the deferral of the development plan. The vote was 8 in favor and 0 opposed.

**RECESS PLANNING COMMISSION
RECONVENE BOARD OF ZONING ADJUSTMENT**

25. Variance #2-1-14; A request by Susan Armbruster, agent for Mike Albanese, for a Variance from 120 days to 180 days maximum length of time for a seasonal permit (Section 27-327) located at 1820 Phoenix Avenue.

Ms. Maggie Rice read the staff report indicating that the purpose of this variance request is to allow the applicant to operate a sno-cone stand at this location for 180 days instead of the 120 days as currently permitted.

Ms. Rice stated that a neighborhood meeting was held on Tuesday, December 24, 2013, at 1820 Phoenix Avenue with no neighboring property owners in attendance.

There was no one present to speak either in favor or in opposition to this request.

Commissioner Keesee noted that possibly the Commission need to look at amending the UDO relative to seasonal permits. Mr. Bailey stated that that was something the Planning staff planned on doing.

Chairman Sharpe then called for the vote on the variance request. The vote was 8 in favor and 0 opposed.

28. Variance #5-1-14; A request by Brandon Woodrome for a variance from 30 feet to 27 feet interior side yard setback located at 2910 South 66th Street.

Ms. Brenda Andrews read the staff report indicating that the purpose of this variance request is to allow an existing house that is part of an on-going multifamily development to remain at its current location. Ms. Andrews noted that if the variance is not approved, the contractor will be required to adjust the structure to meet the required setback.

Ms. Andrews stated that a neighborhood meeting was held on Thursday, January 2, 2014, at 7:15 p.m. at 3201 Rogers Avenue with five (5) residents in attendance but no objections were raised to the proposed variance.

Mr. Brandon Woodrome was present to speak on behalf of this request.

No one was present to speak in opposition.

Mr. Gary Reynolds addressed the Commission requesting that the developer install a fence to screen this development from his property.

Following a discussion by the Commission, motion was made by Commissioner Spearman, seconded by Commissioner Keesee and carried unanimously to amend this request to make approval subject to the following:

- Installation of a 6 foot privacy fence on the north property line as screening for the adjacent single family residential structure. The fence shall be installed at the front corner of the residence and extend along the property toward the west property line.

Chairman Sharpe then called for the vote on the variance request as amended. The vote was 8 in favor and 0 opposed.

Meeting Adjourned!

SUBDIVISION COMMENTS
February 11, 2014

1. The Borough at Middleton, Lots 1-36 & Tract A – Final Plat – Mickle-Wagner-Coleman Engineers

Zoning Designation: Residential Single Family Medium/High Density (RS-3)

Land Use: Provides locations for medium-to-high density, compact single family detached development on new sites or as infill construction.

Proposed Use: Single Family Residential

We recommend approval of the final plat. After all required approvals of the plat and the affixing of all required signatures on the original tracing and other copies and associated documents, the plat will be filed with the county recorder.

We also recommend approval of the proposed Protective Covenants and Bill of Assurance, which are which are included in the packet. Section 27-515 of the Unified Development Ordinance requires private infrastructure improvements within residential subdivisions to be maintained by a maintenance entity, such as a property owners association. This section also requires that the instrument creating the maintenance entity is submitted for review and approval. The only private infrastructure within the Borough at Middleton is perimeter landscaping. Article V of the Protective Covenants specifies that the association will provide and pay for, out of the assessment fund, the care, preservation, and maintenance of the common properties. The maintenance provisions have been reviewed by city staff and comply with the requirements of the UDO.

Douglas R. Whitlock, Professional Surveyor
 Atlanta No. 1369

PLANNING COMMISSION APPROVAL
 Date _____
 Chairman _____
 Secretary _____

FILED FOR RECORD this _____ Day of _____
 20____ at _____ O'clock _____ PM
 Clerk and Ex-Officio Recorder
 by _____

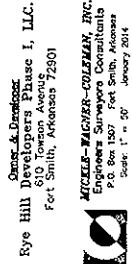
[illegible]

Richard B. Griffin, Operating Manager

[illegible]

For reasons stated above, the recommended finished floor elevation only, and are not to be considered a restrictive comment on the elevations, or 1.0' or more above the 100-year flood elevation of the structure, or, or adjacent to the lot in question. Finished floor elevations are based on a structure's elevation at the minimum first year flood elevation. The structure's elevation at the minimum first year flood elevation is the recommended finished floor elevation.

With a structure at the elevation shown is not on easements that are 100-year specific, a professional engineer should be consulted to prepare a site specific grading plan.

[illegible]

The
BOROUGH
at
MIDDLETON

Lots 1 thru 36 and Tract A, Northwest Quarter, Section 30, T-7-N, R-31-W
Fort Smith, Sebastian County, Arkansas

PROTECTIVE COVENANTS AND BILL OF ASSURANCE

[insert date]

For Rye Hill Developers Phase I of Middleton Farm, a platted subdivision located in the Fort Smith District of Sebastian County, Arkansas.

KNOW ALL MEN BY THESE PRESENTS:

The undersigned, Rye Hill Developers, Phase I, LLC being the developer of certain real property situated in the Fort Smith District of Sebastian County, Arkansas, imposes the following covenants, limitations, restrictions and uses (the "Covenants") on lots 1 through 36 (the "lots") and Tract A of the subject property, known as The Borough at Middleton (the "Addition"), a platted subdivision filed of record in the Fort Smith District of Sebastian County Arkansas on the _____ day of _____, 2013 in the Plat Records. (The legal description of the Addition is shown on the plat of the Addition which is attached as Exhibit "A".) The Covenants shall run with the land for the period of time hereinafter set out and shall be binding upon the Developer and all future owners of the lots. These Covenants are for the benefit of and are limitations upon the Developer and all future owners of the lots and have been designated as such in order to provide for an orderly development of the Addition and for the purpose of making the Addition desirable, uniform and suitable for use as herein specified.

These Covenants shall be binding upon the Developer and all future owners of the lots until January 1, 2063, at which time they shall be automatically extended for an additional twenty (20) years, unless by majority vote of the then lot owners, it is agreed that these Covenants should be changed or amended in whole or in part. In any such vote, the owner or owners of each lot shall have just one (1) vote regardless of the number of owners of said lot. If an owner owns a lot and one-half of a contiguous lot as authorized in Article VI, Section 1 the owner will have one and one-half (1 ½) votes. (For example, if two owners purchase a lot between their lots and then split that lot, both owners would each have one and one-half (1 ½) votes.)

It shall be lawful for the Developer, the Association or any person owning a lot or lots, or any undivided fee interest therein, in the Addition to initiate any proceedings at law or in equity against parties or persons violating or attempting to violate any of the Covenants to seek an injunction against such violation or to recover damages for such violation, or both. Any rights reserved hereunder to the Developer may also be exercised by any owner of lots situated in said Addition, either individually or collectively. The invalidation of any one of the Covenants by a court order shall not invalidate any of the other provisions which shall remain in full force and effect.

ARTICLE I CONCEPTS AND DEFINITIONS

The following words, when used in the Covenants, or any amendments or supplements thereto, shall have the meanings set forth below:

- (A) "Addition" shall mean the property described in Exhibit "A" and as reflected on the plat set out on Exhibit "B" and any additions thereto.

- (B) "Association" shall mean the entity which will have the power, duty and responsibility for maintaining, administering and enforcing these Covenants and collecting and disbursing the assessments and charges hereinafter prescribed. The Association shall be chartered and shall function as a non-profit corporation under the name of the "The Middleton Property Owners Association, Inc."
- (C) "Architectural Control Committee" or "Committee" shall mean the individuals elected by a majority of the owners present at the annual meeting of the Association. Each lot shall have one vote Regardless of the number of owners of a lot. Each member of the Committee shall be an owner of a lot or have an ownership therein and shall be generally familiar with residential and community development design matters and knowledgeable about the Developer's concern for a high level of taste and design standards within the Addition. The annual meeting of the lot Owners shall take place on December 1 of each year or such other date as a majority of the Committee may agree. It shall be the obligation of the Committee to notify the lot owners by regular mail of the location, date and time of the annual meeting. A Developer's designated representative shall remain on the Committee until all lots are sold. There shall be no more than 7 but at least 3 members on the Committee each serving an annual term. There shall be no restriction on the number of consecutive terms a person may serve.
- (D) "Board" or "Board of Directors" shall mean the Board of Directors of the Association elected in accordance with the provisions of the articles of incorporation and by-laws of the Association.
- (E) "Common Properties" shall mean any and all areas of land together with all improvements located therein within the Addition which are known, described or designated as private roadway easements and utility easements along the roadways on any recorded subdivision plat of the Addition that are intended for or devoted to the common use and enjoyment of the members of the Association. The Association shall hold title to the Common Properties, subject to the easement rights herein of the members to use and enjoy the Common Properties. The Developer reserves the right to effect minor redesigns or reconfigurations of the Common Properties and execute any open space declarations applicable to the Common Properties.
- (F) "Developer" shall mean Rye Hill Developers Phase I, LLC, an Arkansas limited liability company, and its successor (s) and assign (s).
- (G) "Lot" or "lot" shall mean any plot or tract of land which is designated as a lot on the plat which is attached hereto and labeled Exhibit "B"
- (H) "Member" or "member" shall mean and refer to each owner of a lot.
- (I) "Owner" or "owner" shall mean each and every person or business entity who or which is a record owner.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every owner of a lot shall automatically be, and must remain, a member of the Association in good standing.

Section 2. Voting Rights. The Association shall have one (1) class of membership for purposes of voting. There shall be a total of thirty-six (36) votes. The owners of each lot (regardless of the number of persons or entities having a fee interest in the lot) shall be entitled to one (1) vote.

Section 3. Quorum, Notice and Voting Requirements. The quorum, notice and voting requirements of the Association are set forth within the articles of incorporation and by-laws of the Association, as the same may be amended from time to time. Subject to the provisions of Section 2 above, any action by or on behalf of the Association may be taken with the assent given in writing and signed by members who hold a majority of votes of the Association; provided, however, that any amendment of the Covenants will require the written assent of the members who hold 2/3 of the votes of the Association.

ARTICLE III PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every member and each individual within a member's nuclear family shall have a non-exclusive right and easement of use, recreation and enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of each respective lot, PROVIDED, HOWEVER, such easement shall not give such person (excluding the Developer and the Committee) the right to make alterations, additions or improvements to the Common Properties.

Section 2. Title to the Common Properties. The Association shall hold such title to the Common Properties for an indefinite period of time, subject to the easements set forth in Section 1 of this Article as is necessary to accomplish the purposes and effects of these Covenants. The Association shall have the right to design, redesign, reconfigure, alter, improve landscape and maintain the Common Properties.

Section 3. Extent of the Member's Easements. The rights and easement created herein shall be subject to the following:

- (A) The right of the Board to prescribe reasonable rules, regulations and policies governing the use, operation and maintenance of the Common Properties;
- (B) The right of the Board to prescribe reasonable rules, regulations and policies governing the use, operation and maintenance of the lots, which are consistent with and in furtherance of the Covenants, provided that no Covenant may be amended without a vote of the members who hold 2/3 of the votes of the Association.
- (C) The right of the Board to enter into and execute contracts with any party for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association, or these Covenants, or both;
- (D) The right of the Board to suspend the voting rights of any member and to suspend the right of any member to use or enjoy any of the Common Properties for; (1) any period during which any assessment (including without limitation special individual assessments) against a lot resided upon by such member remains unpaid, or (2) for any period deemed reasonable by the Board for any infraction of the then existing rules, regulations and policies, and

- (E) The right of the Board to dedicate or transfer all or any part of the Common Properties to any municipal corporation, county government, political subdivision, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the Board.

ARTICLE IV COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer, for each lot owned by it within the Addition, hereby covenants and agrees, and each owner of any lot, by acceptance of a deed therefor (whether from the Developer or some subsequent grantor and whether or not it shall be so expressed in any such deed or other conveyance) shall be deemed to covenant and agree to pay to the Association:

- (A) Regular annual assessments for maintenance, taxes and insurance on the Common Properties;
- (B) Special group assessments for capital improvements or unusual or emergency matters;
- (C) Special individual assessments levied against individual lot owners for violation of rules, regulations and policies pertaining to the Association or the Common Properties or both;

The regular, special group, and special assessments, together with such late charges, interest and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each lot against which each such assessment is made and shall also be the continuing personal obligation of the then existing owner of such lot at the time when the assessment fell due.

Section 2. Purposes of Assessments. The assessments levied by the Board on behalf of the Association shall be used exclusively for the purpose of enhancing the natural environment, appearance and beauty of the Addition and promoting the health, recreation, safety and general welfare of the residents of the Addition.

Section 3. Regular Assessments.

- (A) The amount of the initial regular annual assessment ("regular assessment") for each lot shall be \$150.00 per year. If an owner owns one and one-half lots (1 ½) as authorized in Article VI, Section 1 his assessment shall be \$225.00 per year. The regular assessment may be increased or decreased by a majority vote of the Board.
- (B) The Board shall give notice to all members at least thirty (30) days in advance of the date that all regular assessments are due. The Board may prescribe from time to time that the regular assessments are to be collected on an annual, semi-annual, quarterly, or monthly basis, and accordingly, the Board shall prescribe the appropriate due dates. All regular assessments shall be collected in advance. Upon the sale of a lot the buyer will reimburse the seller for his or her pro rata share of the regular assessment paid during that year.

Section 4. Special Group Assessments. In addition to the regular assessments authorized by Section 3 hereof, the Board may levy in any fiscal year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties. The due date or dates (if it is to be paid in installments) of any special group assessment shall be fixed in the respective resolution authorizing such assessment. The Board shall give notice to all members at least 30 days in advance of the date that any group assessments are due.

Section 5. Rate of Assessments. Except as noted herein, regular and special group assessments shall be fixed at an equal rate for all lots, regardless of the size of the lots. The failure to pay the assessment by the owner of a lot shall constitute a lien only against the lot assessed.

Section 6. Special Individual Assessments. The Board shall hold a special meeting to consider the levy of a special individual assessment. The Board shall give the owner of the subject lot 10 days written notice by regular mail of the special meeting. The owner shall have the right to be present and to speak to the Board at the special meeting. If the Board determines that a special individual assessment is appropriate, the Board will determine the amount and the terms of payment.

Section 7. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; The Lien; and Remedies of Association.

- (A) If any regular, special group or special individual assessment, or any part thereof, is not paid on the date (s) when due, then the unpaid amount of such assessment shall be considered delinquent. The delinquent assessment together with any late charge and interest imposed by the Board (not to exceed the maximum rate allowed under applicable law) and any costs of collection, including attorneys' fees, shall become a continuing debt secured by a self-executing lien on the lot of the non-paying owner. Said lien shall bind such lot in the hands of the owner and owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Board shall have the right to reject partial payments of an unpaid assessment and demand the full payment thereof. The personal obligation of the then-existing owner to pay such assessment shall remain the owner's personal obligation and shall not pass to owner's successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a lot and shall continue in full force and effect. No owner may waive or otherwise escape liability for any assessment provided herein by non-use of the Common Properties or abandonment of the lot.
- (B) The Board may also give written notification to the holder(s) of a mortgage on the lot of a non-paying owner of such owner's default in paying any assessment when such default has not been cured within thirty (30) days of the original date due, provided that the Board has, theretofore, been furnished in writing with the correct name and address of the holder(s) of such mortgage and a request to receive such notification.
- (C) The Board may, at its election, retain the services of an attorney to review, monitor and collect unpaid assessments and delinquent accounts, and there shall also be

added to the amount of any unpaid assessment or to any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any bona fide first mortgage or deed of trust now or hereafter placed upon the lots subject to assessment.

ARTICLE V GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 1. Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors (sometimes referred to as the "Board").

(A) The Board, for the benefit of the Association, the Addition and the owners, will provide and will pay for, out of the assessment fund(s) provided for in Article IV above, any or all of the following:

- (1) The care, preservation and maintenance of the Common Properties and the furnishing and upkeep of any desired personal property and fixtures for use in or on the Common Properties;
- (2) The taxes, insurance (including but not limited to directors' errors and omissions coverage) and utilities (including, without limitation, electricity, gas, water and sewer charges), if any, which pertain the Common Properties only;
- (3) The Services of any person or firm (including the Developer and any affiliates of the Developer) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by a manager hired by the Board;
- (4) Legal and accounting services; and
- (5) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of these Covenants or which in its opinion shall be necessary or proper for the operation or protection of the Association and the Addition or for the enforcement of these Covenants.
- (6) The Maintenance of the Common Properties shall be maintained in accordance with the City of Fort Smith Municipal Code Unified Development Ordinance 27-515-2 and 27-503-11.

(B) The Board shall have the following additional rights, powers and duties:

- (1) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

- (2) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- (3) To make reasonable rules, regulations and policies for the use, maintenance and operation of the Common Properties and to amend them from time to time; and
- (4) To prescribe reasonable rules, regulations and policies governing the use, operation and maintenance of the lots, which are consistent with and in furtherance of the Covenants, provided that no Covenant may be amended without a vote of the members who hold 2/3 of the votes of the Association.

Section 2. Maintenance Contracts. The Board shall have full power and authority to contract with any owner (including, without limitation, the Developer) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

Section 3. Liability Limitations. Neither any member nor the directors and officers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or otherwise. Neither the Developer, the Association, its directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvement or portion thereof or for failure to repair or maintain the same.

Section 4. Reserve Funds. The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses.

ARTICLE VI USE OF LOTS

The Addition (and every lot situated therein) shall be constructed, developed, occupied and used as follows:

Section 1. Residential Lots. All lots within the Addition shall be used, known and described as residential lots. No lot may be divided or split nor shall a division or split be recognized by the Association; provided however that existing owners of lots may purchase another contiguous lot and either consolidate, split or divide that lot so long as the split, division or consolidation does not result in a lot smaller than any of the original lots in the Addition. Only one (1) single family residential dwelling and the customary and usual necessary structures may be constructed on each lot. No multi-family dwelling, including but not limited to duplexes, shall be constructed on any lot. Each single family residential dwelling shall have a minimum of 1,700 square feet of heated space, exclusive of the garage. No residential dwelling shall be constructed on any lot at a cost of less than \$175,000.00. All driveways in the Addition shall consist of a hard surface acceptable to the Committee. No building or structure intended for or adapted to business or commercial purposes shall be erected, placed, permitted, or maintained

on any lot. Home occupations in which customers or suppliers travel to or from a residence in the addition are prohibited. The restrictions on use herein contained shall be cumulative of, and in addition to, any restrictions imposed by the statutes, rules, regulations and ordinances of the City of Fort Smith, Arkansas, or any other governmental authority or political subdivision having jurisdiction over the Addition.

Section 2. Residential Purposes. By acquisition of any lot within the Addition, each owner (excluding bona fide home builders) covenants with and represents to the Developer and to the Association that the lot is being specifically acquired for the specific and singular purpose of constructing and using a residential dwelling thereon:

(A) As a residence for such owner and owner's immediate nuclear family members; or

(B) (if owner is a business entity) as a residence for an existing officer, director, key employee, substantial shareholder or general partner of the owner (as identified and designated to the Developer and the Association), to be occupied as such, and not for the purpose of investment, speculation, leasing, renting, corporate retreat, hospitality suite, or other similar disposition and each owner agrees and covenants that no speculation, leasing, renting, corporate retreat or hospitality suite use(s) shall occur on any lot.

Section 3. Garage and Vehicles. All residences constructed in the Addition shall have a private garage to accommodate a minimum of two vehicles. All garages facing the street shall be finished inside and shall be fully enclosed with garage doors. No window air conditioners shall be installed unless they are obscured from public view and the view of adjacent lots. No vehicle of any type shall be parked in or on the front yards of the residential dwellings. No trucks, including but not limited to tractor/trailer units but excluding pickup trucks, shall be permitted within the Addition, except for the limited purposes of: (1) construction of a dwelling or structure; (2) moving individuals in or out of their residence; (3) pick-up and delivery of mail and parcels; (4) the pick-up of garbage; (5) pick-up and delivery by school, church, or civic groups; or (6) maintenance or repair of a dwelling or structure, or any utilities, appliances or other contents thereof. Any vehicle that has been inoperative for a period of more than ten (10) days shall be stored in the garage or at the rear of the main residential structure so as to be obscured from public view and the view of adjacent lots. No "For Sale" sign shall be placed on any vehicle, trailer, mobile home, boat, recreational vehicle or any other item of personal property parked, stored or located on a lot or any street within the Addition.

Section 4. Detached Structures. Any detached structure to be built on a lot, such as a covered entertainment area, guest house, barn, in-ground swimming pools, children's playhouse, mailbox or other structure shall conform to the design and style of the dwelling and the plans for any such structures must be submitted to the Architectural Control Committee for approval prior to construction as provided in this Article. Any detached structure must set on a permanent foundation. A residential dwelling may have an outdoor patio deck, but only on the rear of the main residential structure so as to be obscured from public view.

Section 5. Temporary Structures and Recreational Vehicles. No mobile home shall be erected or placed on any lot, either temporarily or permanently. No trailer, tent, construction shack or other out building shall be erected or placed on any lot in the Addition, except for temporary use by construction contractors for a reasonable period of time and only in such location and for such time as may be designated by the Architectural Control Committee. Boats, motorcycles, boat or other trailers, recreational vehicles ("RV") and other vehicles used for recreational purposes, shall be stored to the rear of the main residential structure on each

lot. No trailer, tent or other detached temporary structure and no recreational vehicle shall be used as a residence, either temporarily or permanently.

Section 6. Setback Lines. No above ground structure (except retaining walls of less than 3 feet in height and approved fences) shall be constructed or installed between the front property line and the front yard setback line (as shown on Exhibit B). No retaining walls or other structure exceeding 3 feet in height shall be constructed or installed on that part of a lot which lies between the front yard setback and the line which runs along the front foundation of the principal residence and which intersects side property lines ("front building line").

The setback between the sides of residences on adjacent lots shall be a minimum of Seven and one half (7 ½) feet from each side of the side property line. The rear setback shall be a minimum of ten (10) feet from the rear property line of each lot. No above ground structure (except retaining walls of less than 3 feet in height and approved fences) shall be constructed or installed between the side setbacks and the side property lines or between the rear setback and the rear property line.

Porches, in-ground swimming pools, steps, chimneys, window boxes and other portions of a permitted structure shall not project beyond the minimum front, side or rear setback lines.

Section 7. Fences. No galvanized or concrete block fences will be permitted in the Addition. Plans for all fencing, whether on lot lines or surrounding patios, pools, barns, or other areas of the lot must be submitted to, and approved by, the Architectural Control Committee prior to the construction thereof. In the approval of the fencing, the Architectural Control Committee shall give consideration to the location, height, material conformity with neighboring areas, and the obstruction of views.

ARTICLE VII EASEMENTS

Section 1. Dedication. The Developer has and does hereby dedicate for public use all of the streets shown on the plat filed concurrently herewith as a part of the Addition to the City of Fort Smith. The Developer further has and hereby does dedicate to the public, for public use forever, the easements and rights-of-way (hereinafter referred to as the "utility easements") as designated on the plat of the Addition for the several purposes of constructing, maintaining, operating, repairing and replacing sanitary sewer lines, if any, telephone lines, electric power lines, transformers, gas lines, water lines, television cable lines, and any other utility or public service lines (collectively referred to hereinafter as "utility lines"), together with all fittings and equipment for each of such facilities and any other appurtenances thereto, with the right of ingress and egress upon said easements and rights-of-way for the uses and purposes aforesaid, together with similar rights on each and all of the streets shown on the plat. The Developer hereby reserves the right to construct, maintain, operate, lay and relay the utility lines together with the right of ingress and egress for such construction, maintenance, operation, laying and relaying over, across and along all the public streets and utility easements shown on said plat. The utility easements are for the use and benefit of the Developer and its designees as well as the public utilities, their designees, agents and employees. The rights and privileges and authority herein reserved includes the right to cut down and keep trimmed all trees, hedges and shrubs that may, in the judgment of the Developer, its designees or any public utilities, or its designees, interfere with or endanger such utilities. Nothing contained in the article shall be interpreted as requiring the Developer to construct or maintain any of the utility lines on any

portion of the Addition. The utility easements shall run with the land and shall be binding on and enforceable against the owner (and his or her heirs, successors and assigns) on any lot on which utility easement lies.

Section 2. General. All utility lines or other pipes, fittings or equipment for public services, including but not limited to sewer, water, electric, gas, telephone and TV cable, shall be located underground in the utility easements or public streets. Service pedestals and transformers, as sources of supply as secondary voltages, shall also be located in said easements. All lines or services running from the utility easements to a residence or other structure ("the utility service line") shall also be underground. Utility service lines shall run from the nearest service pedestal or transformer to the point of use as determined by the location and construction of such residence or other structure upon said lot. Upon the installation of the utility service line, the supplier of the service shall thereafter be deemed to have a definite, permanent, effective and exclusive right-of-way easement on said lot, covering a five foot strip extended 2.5 feet on each side of such utility service line, extending from the service pedestal or transformer to the service entrance of said residence or other structure ("utility service easement"). The supplier of the service, through its proper agents and employees, shall at all times have the right of access to all such utility service easements. This right shall apply to all suppliers of public utilities and quasi-public utilities, as for example, television cable companies. If an owner constructs a locked gate across the main entrance to a lot the owner shall provide a means to access the lot to each utility service supplier (i.e., key to the gate, copy of access code, etc.). The owner of each lot shall be responsible for the protection of the utility service lines located on his or her lot and shall prevent the alteration of grade or any construction activity which may interfere with said service. Repairs or costs of relocation required by the violation of this covenant shall be paid by the owner of this lot. The utility service easements shall run with the land and shall be binding on and enforceable against the owner (and his or her heirs, successors and assigns) of any lot on which a utility service easement lies.

Section 3. Gas Lines. All gas lines to a residence or other structure ("gas lines") will be made of plastic pipe of a size and material approved by the gas company. As approved tracer wire will be installed in a trench with the plastic pipe and attached to the meter riser per the gas company's specifications. Meter set assemblies will be installed by a plumber and shall be installed within five feet of the front corner of the structure. No gas line will be installed under concrete or asphalt unless installed in a casing approved by the gas company. Gas lines and inlet meter risers will be tested at not less than 90 PSIG air or nitrogen for 24 hours, approval and acceptance of same to be by the gas company personnel. Shrubbery will be limited so as not to interfere with the meter reading and normal maintenance of said meter.

Section 4. Approval of Easements. Subject to the right of the Developer to amend the covenants pursuant to Article XIV, Section 2, no portion of any lot shall be used for a driveway, street, passageway, public right of way or easement of any type to service or benefit property or owners of real property adjoining the Addition, unless such usage is approved by two-thirds (2/3) of the voting members of the Association and the Developer, its successors or assigns.

**ARTICLE VIII
ARCHITECTURAL, CONTROL, COMMITTEE—APPROVAL OF PLANS,
CONTROL, OF DEVELOPMENT ACTIVITIES**

Section 1. Submission of Plans. In order to maintain a beautiful and pleasing setting in a luxury-living subdivision, two (2) sets of all building and site improvement plans and specifications must be submitted to the Architectural Control Committee for its approval prior to the commencement of construction of the single family residential dwelling or any other structure or improvement on a lot, or any addition or modification of an existing dwelling, structure or improvement. The Architectural Control Committee shall act to enforce the requirements of these Covenants in a reasonable manner. The Architectural Control Committee has the authority to maintain the architectural conformity of the development and, in consideration thereof, shall determine that the proposed construction shall not detract from the development and shall enhance the purpose of the development to provide a beautiful and pleasing setting in a luxury-living subdivision. The Architectural Control Committee shall consider such matters as the proposed square footage, location, materials, exterior style and landscaping. The Architectural Control Committee will adopt by-laws explaining the mechanics of its operation and providing for a fourteen (14) day maximum time within which plans must be reviewed and approved or disapproved after submission and, if not approved or disapproved in that period, that the same shall be considered as automatically approved.

Section 2. Ponds All plans or schemes for the diversion of drainage or for the construction or reconfiguration of an artificial pond or lagoon, shall be approved by the Architectural Control Committee.

ARTICLE IX OFFENSIVE ACTIVITIES

No offensive activity, including but not limited to the discharge of firearms or fireworks, shall be permitted on any lot, nor shall any activity be undertaken on any lot that shall become an annoyance or nuisance to the Addition. The burning or burying of leaves, debris and trash shall not be permitted on any lot. The manufacture or sale of alcoholic beverages shall not be permitted in the Addition. The consumption of alcoholic beverages shall not be visible from any street. The development of minerals of any kind or nature is prohibited within the Addition; provided, however, underground hydrocarbon minerals may be captured by wells located outside the Addition. No privy, cesspool or disposal plant shall be installed or maintained on any lot in the Addition, and all residences and permitted accessory buildings shall have its plumbing connected to the city sanitary sewer system.

ARTICLE X ANIMALS

Animals shall be allowed in the Addition subject to the following limitations. An owner shall be permitted to have dogs and cats for non-commercial purposes as long as the number and type fall within the City of Fort Smith regulations. The number and type of dogs and cats shall not interfere with any other owner's right to the quiet enjoyment of his property and so long as said animals are not permitted to trespass on the property of another or any portion of the Common Properties. Dog kennels shall be located at the rear of the residential dwelling so as to be obscured from public view and the view of adjacent lots. An owner shall not be permitted to have horse(s), cattle, swine, poultry, fowl, wild animals or exotic animals in the Addition. The Board shall have authority to enforce these provisions and to make decisions regarding limitations upon the ownership of animals in the Addition.

ARTICLE XI

MOTORIZED VEHICLES

Motorized vehicles including, but not limited to racecars, motorbikes, motorcycles, scooters, mopeds, trail bikes, four wheelers, and any other similar mechanical devices shall not be operated within the Addition except for the sole and exclusive purpose of ingress and egress to and from lots and the public road. The purpose of this restriction is to reduce noise and other pollution so as to permit maximum enjoyment of the surroundings in the Addition. It shall not apply to equipment normally used for lawn or garden maintenance so long as said equipment is operated in the ordinary and usual manner intended. All motorized vehicles shall have properly muffled exhaust systems. This restriction includes lawn and garden equipment.

ARTICLE XII SIGNS

Unless approved in writing by the Architectural Control Committee, signs shall be prohibited on all lots except that one (1) sign, not exceeding four (4) square feet in size, advertising a particular lot for sale shall be permitted with the building setback lines. No yard art or metal yard decorations are permitted.

ARTICLE XIII ADDITIONAL DESIGN AND CONSTRUCTION CRITERIA

Section 1. Storage of Construction Materials. Construction materials may be stored on a lot within the building setback lines for thirty (3) days prior to the commencement of construction and thereafter, construction is to be completed within a reasonable period of time.

Section 2. Garbage; Dumping. Dumping is prohibited in the Addition. All trash, garbage or other waste shall be kept in sanitary containers which shall be located in the garage or at the rear of each residential unit. All lots shall be maintained in a neat and orderly condition at all times. Containers shall be placed for collection at an area designated by the city on the day of pick-up and shall be promptly removed within two (2) days of trash pickup.

Section 3. Antenna, Aerial and Other Devices. Antennas, aerials or similar devices for television, citizen's band, shortwave or radio reception shall not be allowed in the Addition unless approved by the Architectural Control Committee.

Section 4. Appearance of Lots. All owners shall be required to keep their lot in a clean and sanitary condition whether or not they have constructed a residence on the lot. "Indoor furniture" shall not be used as lawn furniture and shall not be placed outside of the residence or in approved detached structure. One satellite dish shall be permitted on each lot but only in the diameter of the dish is 24" or less and only if the dish is installed to the rear of the main residential structure, so as to be obscured from public view and the view of adjacent lots. No clotheslines or drying yards shall be permitted unless concealed by hedges, lattice work or screening acceptable to the Committee. No refuse or debris pile shall be placed anywhere on a lot. All open areas on lots shall be kept mowed and weeded to a height of not more than eight (8) inches.

ARTICLE XIV MISCELLANEOUS PROVISIONS

Section 1. Enforcement. The Association or any owner may seek enforcement of the Covenants by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants; but failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing party.

Section 2. Additional Subdivisions. The Addition is part of a tract formerly known as the Middleton Farm. In addition to the lots in the Addition, the Developer owns additional real property which was part of the Middleton Farm. The Developer may develop other platted subdivisions on all or part of the other real property which was formerly part of the Middleton Farm. In such event the Developer reserves the absolute right to amend the Covenants to include or to cover any future subdivision which was originally part of the Middleton Farm. In such event the owners of lots in any future subdivisions shall become Members of the Association with all of the rights, duties, and obligations as set forth in Article I, II, III, IV, V, VIII IX and XIV. The Developer reserves the absolute right to impose covenants, limitations, restrictions and uses on the lots in any future subdivision which are different from the covenants, limitations, restrictions and uses contained in Articles VI, VII, X, XI, XII, XIII; provided however that (subject to the right of the membership to amend the Covenants pursuant to Article II, Section 3) any such amendment by the Developer which imposes a different covenant, limitation, restriction or use on the lots in any future subdivision shall not affect the covenants, limitations, restrictions and uses for the lots in the Addition. (For example, the Developer may restrict or prohibit the construction of fences in the front yards of a future subdivision. Any such restriction by the Developer with respect to a future subdivision would not prohibit fences in the front of the Addition. However, the Members, which would then be comprised of the owners of the lots in the Addition and the future subdivision, could amend the original covenants to prohibit such fences, pursuant to Article II, Section 3).

Section 3. Validity. Violations of or failure to comply with these covenants and restrictions shall not affect the validity of any mortgage, bona-fide lien or other similar security instrument which may be then existing on any lot. Invalidation of any one or more of these covenants and restrictions, or any portions thereof, by a judgment, decree, or court order shall not affect any of the other provisions or covenants herein contained which shall remain in full force and effect. In the event any portion of these Covenants conflict with any ordinance or regulation promulgated by a governmental authority, then the governmental provisions shall control.

Section 4. Severability. If any provision of these Covenants shall be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall attach only to such provision and shall not in any manner effect or render illegal, invalid or unenforceable any other provisions of these Covenants, and these Covenants shall be carried out as if any such illegal, invalid, or unenforceable provision were not contained therein.

Section 5. Headings. The headings contained in these Covenants are for reference purposes only and shall not in any way affect the meaning or interpretation of the provisions set out herein. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise.

Section 6. Notices to Member/Owner Any notice required to be given to any member or owner shall be deemed to have been properly delivered when deposited in the United States Mail, postage prepaid, addressed to the last known address of the person who appears as the member or owner on the records of the Association at the time of such mailing.

Section 7. Disputes. Matters of dispute or disagreement between owners with respect to interpretation or application of the provisions of these Covenants or Association by-laws, or the rules and regulations of the Board shall be determined by the Board of Directors of the Association. These determinations (absent arbitrary and capricious conduct) shall be final and binding upon all owners.

INWITNESS WHEREOF, Rye Hill Developers Phase I, LLC being the Developer herein has caused this instrument to be executed by its Operating Manager, the day and date first above written.

"DEVELOPER"
Rye Hill Developers Phase I, LLC

By: _____
Richard B. Griffin, Operating Manager

Exhibit A
Legal Description

Part of Government Lot 1 of the Northwest Quarter of Section 30, Township 7 North, Range 31 West, Fort Smith, Sebastian County, Arkansas. Being more particularly described as follows:

Beginning at the Northeast Corner of said Government Lot 1, said point being marked with an existing magnetic nail; Thence along the East line of said Government Lot 1, S02°35'45"W, 4.30 feet to the approximate centerline of Howard Hill Road; Thence along said centerline the following courses: 223.60 feet along the arc of a curve to the left, said curve having a radius of 400.00 feet and being subtended by a chord having a bearing of S63°58'25"W and a distance of 220.70 feet; S47°57'35"W, 498.03 feet; 356.90 feet along the arc of a curve to the right, said curve having a radius of 600.00 feet and being subtended by a chord having a bearing of S65°00'01"W and a distance of 351.66 feet; S82°02'27"W, 311.48 feet; 180.38 feet along the arc of a curve to the left, said curve having a radius of 1100.00 feet and being subtended by a chord having a bearing of S77°20'35"W and a distance of 180.18 feet to the west line of said Government Lot 1; Thence along said West Line, N03°47'08"E, 706.53 feet to the Northwest Corner of said Government Lot 1, said point being marked with an existing ½" iron pin; Thence S88°18'29"E, 1325.34 feet to the Point of Beginning, containing 13.47 acres, more or less.

10

EXHIBIT B
PLAT

SUBDIVISION COMMENTS

February 11, 2014

2. Huntington Chase, Lots 1 & 2 – Final Plat - Mickle-Wagner-Coleman Engineers

Proposed Zoning Designation: Commercial Moderate (C-3)

Land Use: Provides for general commercial activities, offices, and services for the community. C-3 zoning promotes a broad range of commercial activities, operations, and services that are dispersed throughout the city and designed at a smaller scale than a regional center.

Proposed Use: Commercial Development – The developer has not identified any specific uses. On 12/11/12, the planning commission approved a deferral of a development plan.

We recommend approval of the final plat. After all required approvals of the plat and the affixing of all required signatures on the original tracing and other copies and associated documents, the plat will be filed with the county recorder.

2A

SUBDIVISION COMMENTS

February 11, 2014

3. Cancer Support Foundation Addition, Lots 1A & 1B – Preliminary Plat – Brixey Engineering

Zoning Designation: Lot 1A – Transitional (T)

Land Use: Provides locations for small scale areas for limited office, professional service, and medical services designed in scale with surrounding residential uses.

Existing Use: Reynolds Cancer Support House

Zoning Designation Lot 1B – Residential Multi-Family Medium Density (RM-3)

Land Use: Provides locations for medium density detached homes, including multi-unit residential buildings in areas where such development already exists or is planned for the future.

Proposed Use: Multifamily Development

Staff recommends approval with the following conditions:

- 1) The developer must agree to meet all franchise and City utility easement requirements.
- 2) The preliminary and final plat must comply with the city's Subdivision Design and Improvement Standards and the Standard Specifications for Public Works Construction.

4. Cancer Support Foundation Addition, Lots 1A & 1B – Final Plat – Brixey Engineering

Zoning Designation: Lot 1A – Transitional (T)

Land Use: Provides locations for small scale areas for limited office, professional service, and medical services designed in scale with surrounding residential uses.

Existing Use: Reynolds Cancer Support House

3,4-1

Zoning Designation

Lot 1B – Residential Multi-Family Medium
Density (RM-3)

Land Use:

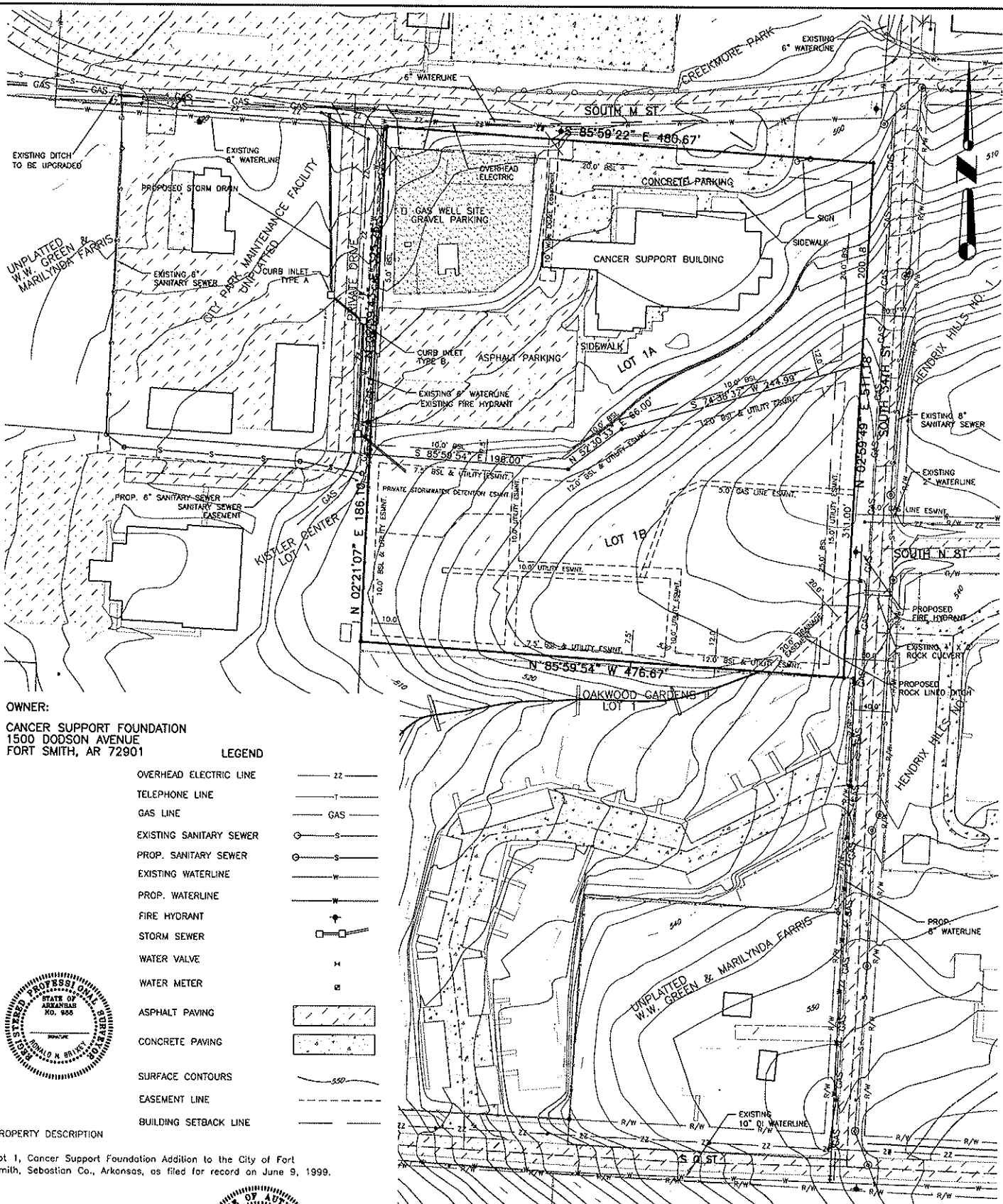
Provides locations for medium density detached
homes, including multi-unit residential buildings
in areas where such development already exists or
is planned for the future.

Proposed Use:

Multifamily Development

We recommend approval of the final plat. After all required approvals of the plat and the affixing of all required signatures on the original tracing and other copies and associated documents, the plat will be filed with the county recorder.

3,4-2



OWNER:

CANCER SUPPORT FOUNDATION
1500 DODSON AVENUE
FORT SMITH, AR 72901

LEGEND

OVERHEAD ELECTRIC LINE	— 22 —
TELEPHONE LINE	— T —
GAS LINE	— GAS —
EXISTING SANITARY SEWER	— S —
PROP. SANITARY SEWER	— S —
EXISTING WATERLINE	— W —
PROP. WATERLINE	— W —
FIRE HYDRANT	— H —
STORM SEWER	— S —
WATER VALVE	— V —
WATER METER	— M —
ASPHALT PAVING	— A —
CONCRETE PAVING	— C —
SURFACE CONTOURS	— 500 —
EASEMENT LINE	— E —
BUILDING SETBACK LINE	— B —

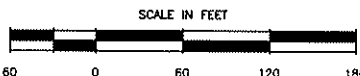
PROPERTY DESCRIPTION

Lot 1, Cancer Support Foundation Addition to the City of Fort Smith, Sebastian Co., Arkansas, as filed for record on June 9, 1999.

LOT 1A ZONING: TRANSITIONAL
LOT 1B ZONING: RESIDENTIAL MULTIFAMILY RM-3

NOTE:
1. Payment will be made to the City of Fort Smith in lieu of construction of a sidewalk in and adjacent to the South 34th Street R/W line.

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Any unauthorized use of this drawing or data by others is at the sole risk of the user. Brixley Engineering & Land Surveying, Inc. shall be held harmless and without liability from claims, costs or damages of any nature including costs of defense arising from improper use of this drawing or data, or by another party.



BRIXLEY ENGINEERING & LAND SURVEYING, INC.
CONSULTING ENGINEERS — LAND SURVEYORS
5225 East Highway 45 P.O. Box 8180 Fort Smith, Arkansas 72906 (479) 646-8364

LEGEND
Computed Point
Set 1/2" Iron Pin
Set 1/2" Iron Pin
Set R.R. Spike
Set R.R. Spike
Set Nail
Set Nail
Set Stone
Set Monument
Set Fence

STATE OF ARKANSAS
REGISTERED PROFESSIONAL ENGINEER
RONALD N. BRIXLEY
NO. 4156

PRELIMINARY PLAT
CANCER SUPPORT FOUNDATION ADD.
LOTS 1A & 1B
CITY OF FORT SMITH
SEBASTIAN COUNTY, ARKANSAS
Prepared For: GRIFFIN PROPERTIES, LLC

Date: 1/14/14
Drawn By: RNB
Approved: RNB
Job No. 13-0322
Sheet 1

3,4-3

PLANNING COMMISSION APPROVAL

Chairman _____ Date _____
Secretary _____

ALLOTTERS:

STATE OF ARKANSAS
COUNTY OF SEBASTIAN
Sworn to and subscribed before me this day _____
Notary Public _____
My Commission Expires _____

FILED FOR RECORD this _____ day of _____
2014 at _____ o'clock _____ m.
Clark and Ex Officio Recorder
By: _____

CERTIFIED CORRECT:



Ronald N. Bixey
Registered Professional Engineer
Arkansas Reg. No. 4456

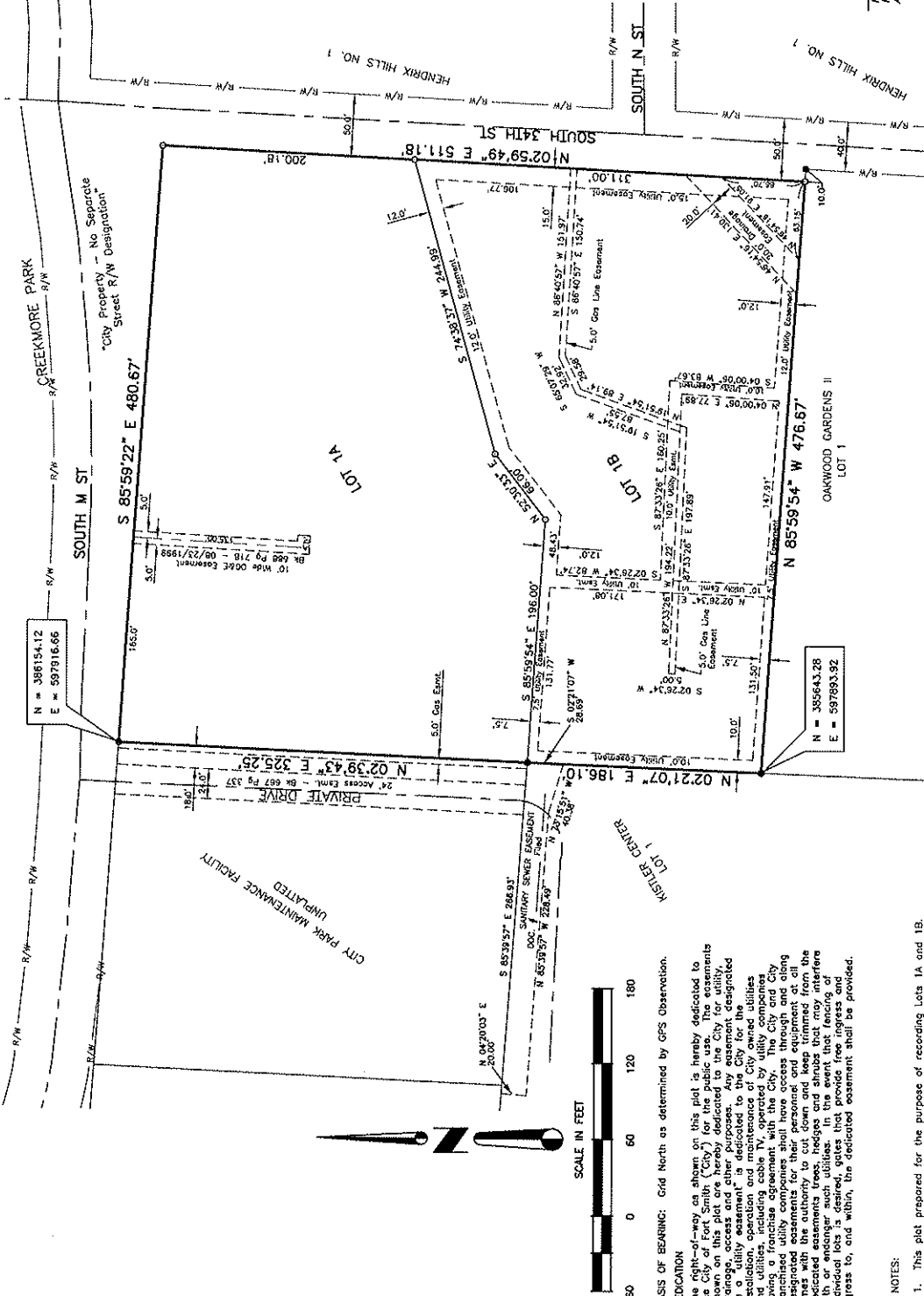
Ronald N. Bixey
Registered Land Surveyor
Arkansas Reg. No. 988

OWNER:

CANCER SUPPORT FOUNDATION
1500 DODSON AVENUE
FORT SMITH, AR 72901

SURVEY DESCRIPTION

Lot 1 Cancer Support Foundation Addition to the City of Fort Smith, Sebastian County, Arkansas as filed for record June 9, 1999.



CANCER SUPPORT FOUNDATION ADDITION LOTS 1A & 1B

BEING A REPLAT OF CANCER SUPPORT FOUNDATION ADDITION LOT 1
AS FILED FOR RECORD JUNE 9, 1999
CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS

FEBRUARY 2014

Bixey Engineering & Land Surveying, Inc.
1500 Dodson Avenue
Fort Smith, AR 72901 (479) 444-4344



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All measurements on this survey or map are based on the best available information and are subject to change without notice. The owner of this survey or map warrants that the measurements and calculations were made in accordance with the standards of the profession and that the survey or map was prepared by a duly licensed professional engineer or land surveyor.

NOTES:

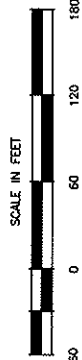
1. This plat prepared for the purpose of recording Lots 1A and 1B.
2. An existing iron pin or a 1/2" iron pin with a yellow cap stamped LS 988 will be located at each lot corner.

Private Stormwater Detention Easement

The installation and future maintenance of the stormwater detention facility is a condition of the approval of this plat. The private stormwater detention easement is a perpetual easement for the stormwater detention facility, and the use of the easement area is restricted for this purpose, and purposes not inconsistent (as determined by the City) with this purpose. The property owner is obligated to maintain the detention facility in a fully functional condition. By action of it's governing body, the City may modify, release or vacate the owner's obligations and the stormwater detention easement.

DEDICATION

The right-of-way on shown on this plat is hereby dedicated to the City of Fort Smith ("City") for the public use. The easements shown on this plat are hereby dedicated to the City for utility, drainage, access and other purposes. Any easement designated for utility, drainage, access and other purposes shall be subject to installation, operation and maintenance of City owned utilities and utilities, including cable TV, operated by utility companies having a franchise agreement with the City. The City and City residents shall have the right to install, operate and maintain the designated easements for the purpose of installing, operating and maintaining dedicated easements trees, hedges and shrubs that may interfere with or endanger such utilities. In the event that fencing of easement area is required, the easement shall be provided.



3, 4-4

Memo

To: City Planning Commission

From: Planning Staff

Date: January 27th, 2014

Re: Home Occupation #1-2-14 - A request by Stacey Mason, for Planning Commission consideration of a custom t-shirt design business in a Residential Multifamily Medium Density (RM-3) zone located at 1900 South "Z" Street – Apt. #1

LOT LOCATION AND SIZE

The Mason residence is located on the southeast corner of South Z Street and Bluff Avenue. The tract contains an area of 0.64 acres with approximately 200 feet of street frontage along South Z Street and 140 feet of street frontage along Bluff Avenue.

EXISTING ZONING

The existing zoning on this tract is Residential Multifamily Medium Density (RM-3). Characteristics of this zone are as follows:

Purpose:

To provide for medium density attached homes, including multi-unit residential buildings in areas where such development already exists or is planned for the future. The RM-3 zoning district is appropriate in urban areas within the Residential Attached, Mixed Use Residential, Mixed Use Employment, Commercial Neighborhood, and General Commercial Land use categories of the Master Land Use Plan.

Permitted Uses:

Single-family, duplex dwellings, multifamily developments, community residential facility, family and neighborhood group homes and retirement housing are examples of permitted uses.

Conditional Uses:

Assisted living, bed and breakfast inn, dormitory, sorority, fraternity, rooming or boarding house, commercial communication towers, amateur radio transmitting towers, community recreation center, golf course, utility substation, country club, parks, college, primary and secondary schools, preschool, nursery schools, police and fire stations, daycare homes, senior citizen center, churches and rectory, convent, monastery are examples of uses permitted as conditional uses.

Area and Bulk Regulations:

Minimum Lot Size – 6,500 square feet	Maximum Height - 40 feet (1+1)
Maximum Density – 20 Dwelling Units/Acre	Maximum Lot Coverage - 65%
Minimum Lot Width at Building Line – 60 feet	
Minimum Street Frontage – 20 feet	
Front Yard Setback - 25 feet	
Side Yard on Street Side of Corner Lot - 15 feet	
Side Yard Setback – 7.5 feet	
Rear Yard Setback - 10 feet	
Side/Rear adjacent to RS district/development – 30 feet	
Minimum building separation – 10 feet	

SURROUNDING ZONING AND LAND USE

The areas to the north and east are zoned Residential Multifamily Medium Density (RM-3) and are developed as duplexes.

The area to the south is zoned Residential Multifamily Medium Density (RM-3) and is developed as a single family residence.

The areas to the west are zoned Transitional (T) and developed as single family residences.

LAND USE PLAN COMPLIANCE

The *Unified Development Ordinance* currently classifies the site as Residential Detached and Residential Attached land use classification. The Residential Detached classification is intended to create and maintain stable neighborhoods, provide safe, attractive family environments, and protect property values. The Residential Attached classification is intended to provide for diverse populations and households, by supporting variety and options in living environments, and housing, while protecting and improving property values. Approval of the business will not conflict with the goals and objectives of the Unified Development Ordinance.

PROPOSED HOME OCCUPATION

The applicant has requested to operate a custom t-shirt design business from her residence. Equipment that will be utilized in the business includes a t-shirt press and printer. Photographs of the equipment are labeled and included in the packet. Customers will not come to the residence and the applicant will not utilize any drop shipping for the business. The applicant states the business will be operated Monday thru Saturday during the hours of 8:00 am to 9:00 pm.

PLANNING COMMISSION AUTHORITY

The *Unified Development Ordinance* allows the Planning Commission the authority to grant to residents of Residential-3 (RS-3 and RM-3), Residential-4 (RS-4 and RM-4) and Historic-1 (RH) zones the privilege of engaging in the limited pursuit of an occupation, operating minimal business activities or offering limited professional services in their homes, provided that in the opinion of the Planning Commission, those activities do not conflict with the purposes and

objectives of this chapter as stated in Section 27-101 and provided such activities comply with this section as well as any conditions and limitations the Planning Commission deems necessary for any particular case in carrying out the spirit and intent of a section.

COMPATIBILITY/CONDITIONS

The planning commission is not required to approve an application for the operation of any home occupation which, in its opinion, is not compatible with the integrity of the neighborhood. The Planning Commission may impose conditions and restrictions on the property benefited by the home occupation use to reduce or minimize the injurious effects of the home occupation.

STAFF COMMENTS AND RECOMMENDATIONS

In addition to Section 27-338-4F (Minimum Requirements for Consideration) Planning Staff recommends approval of the requested home occupation subject to the following:

1. The business license cannot be transferred to another residence without a new Home Occupation Application.
2. No commercial trash container will be placed at the residence.
3. No sale of any retail or wholesale item or items shall take place on the premises.
4. See the attached Home Occupation requirements.

HOME OCCUPATION REQUIREMENTS

Sec. 27-338-4F. Minimum requirements for consideration

The planning commission, in reviewing applications under this section, may consider the performing of a skill, talent, service or profession on a limited basis as a home occupation only if it complies with all of the following:

1. The area to be used for the home occupation is no greater than thirty (30%) percent of the living space of the residence.
2. There shall be no occupational activity on the premises outside of the main structure. An existing detached building which is utilized in conjunction with a home occupation shall be no larger than three hundred (300) square feet in size and can only be utilized for storage of materials.
3. No sign may be used in the operation of the business.
4. No outdoor display of any goods or services and no outdoor storage of materials or equipment are allowed.
5. The home occupation is required to be run only by the resident members of the household and shall not have any other employees, concessionaires or other operators or helpers whether such business is conducted on the premises or off the premises.
6. No sale of any retail or wholesale item or items is allowed on the premises unless they are considered as an accessory item of the approved business. Items drop-shipped or delivered by order may be permissible only after the Planning Commission has approved such operation.
7. Any business conducted on the premises shall be by appointment only, such that no more than two (2) patrons shall be at the business at any one time.
8. The Planning Commission shall have the authority to limit the operating hours of a business where it deems it necessary in order to assure compatibility with the residential neighborhood.
9. The resident shall not utilize the address of the property in any form of business advertising. This includes, but is not limited to, paid commercial advertising, telephone directory advertising, flyers, business cards, etc.
10. The home occupation shall not produce any fumes, odors, noise or any other offensive effects that are not normal to residential activity.
11. The home occupation shall not require the construction of any additional off-street parking areas which would detract from the residential character of the neighborhood. The Planning Commission in exceptional circumstances may allow the construction of additional off-street parking, but under no circumstances more than two (2) spaces in addition to those currently in use for residential purposes. All parking and maneuvering areas must be completely contained on private property. A parking site plan must be approved by the Planning Commission where a business would require customers coming to the property.

APPLICATION FOR HOME OCCUPATION

(Please print or type)

Name of Applicant: Stacey Mason

Legal Description of property included in the home occupation request:

Street Address of Property: 1900 S 2nd Apt 1 Ft. Smith AR

Zone Classification: RM-3

Type of Business Requested: Custom T shirt design, heat transfer

→ Lot 1A+4, Block 84, Bailey subdivision

Signed:

Stacey Mason
Applicant's Name (please print)

369-825-8643
Phone Number of Applicant

1900 S 2nd Apt 1 Ft. Smith AR
Applicant Mailing Address

[Signature]
Applicant
01/03/14
Date

Trinity
Property Owner
01/03/14
Date

(if rental property)

Home Occ. # 1-2-14

HOME OCCUPATION INFORMATION FORM

1. Describe what type of business you are requesting. Custom Tshirt Printing
2. Will this business be completely contained in the residential structure? Yes ☒ No ☐
If no, described location. _____
3. What percentage of the residential floor area will be required to operate the business?
less than 1 bdrm 15-20%
4. Will operation of the business utilize any persons other than members of the immediate household? Yes ☐ No ☒
5. At what hours and days of the week do you plan to operate the business? Mon-Sat - 8am-9pm
6. Will there be any noise Yes odor NO or other outdoor activity NO
associated with the business? If yes, explain. Printer
7. Will materials or supplies be stored at this location? Yes ☒ No ☐
8. How much storage will be needed? closet space
9. Will merchandise be sold at this location? Yes ☐ No ☒ If yes, explain. _____
10. Will you have any business vehicles? Yes ☒ No ☐ If yes, describe below.
Type of Vehicle:
Make Mercedes-Benz Model C400-2011
Color Grey Length (trailer) _____
11. Will this business require any license, certification, accreditation other than a city occupation license? Yes ☐ No ☒ What type? _____
12. Can you operate this business by appointment only? Yes ☒ No SM
Explain: We just take orders than deliver them

13. Will customers come to this location? Yes _____ No ☒

14. How many customers do you expect to have coming to your home at any one time?

None

15. Do you expect any drop-in customers? Yes _____ No ☒

16. How do you plan to provide parking for customers? NA

17. Do you plan to advertise this business? Yes ☒ No _____

If yes, by what methods? business cards, social media, word of mouth

18. Do you understand advertising the street address is not permitted? (Including the telephone directory listings.) Yes ☒ No _____

19. Do you understand the utilization of a sign in conjunction with this business is not permitted? Yes ☒ No _____

20. Will the Home Occupation require a commercial trash container (dumpster)?
Yes _____ No ☒

21. Do you own or rent this property? rent

22. If renting, please attach a letter from the property owner giving you permission to operate this home occupation.

23. Do you live at this location? Yes ☒ No _____

24. Do you understand that failure to comply with the home occupation requirements could constitute the revoking of the occupation license issued for this business?
Yes ☒ No _____

25. Provide any other information that you feel helpful.



To: Whom this may concern
From: Megan Ferguson, Property Manager
Date: December 10, 2013

Stacey Mason has our permission to obtain and use small equipment for designing clothes at her apartment located at: 1900 South Z Street #1, Ft. Smith, AR 72901, as long as she is not selling the items from her apartment or listing her apartment as her business address. If you should have any questions you may contact me at the number below.

Megan Ferguson | Community Director
Addison Place, Z Street, MCS,
Stonebriar Ct. and Forrest Brook

Trinity Multifamily

3415 S. 66th St. | Fort Smith, AR 72903

Ofc: 479.484.1515 | Fax: 479.484.1516 | Mob: 479.739.7674

megan.ferguson@trinitymultifamily.com |

http://www.trinitymultifamily.com

Home Occupation #1-2-14: Custom T-shirt Design 1900 South Z Street



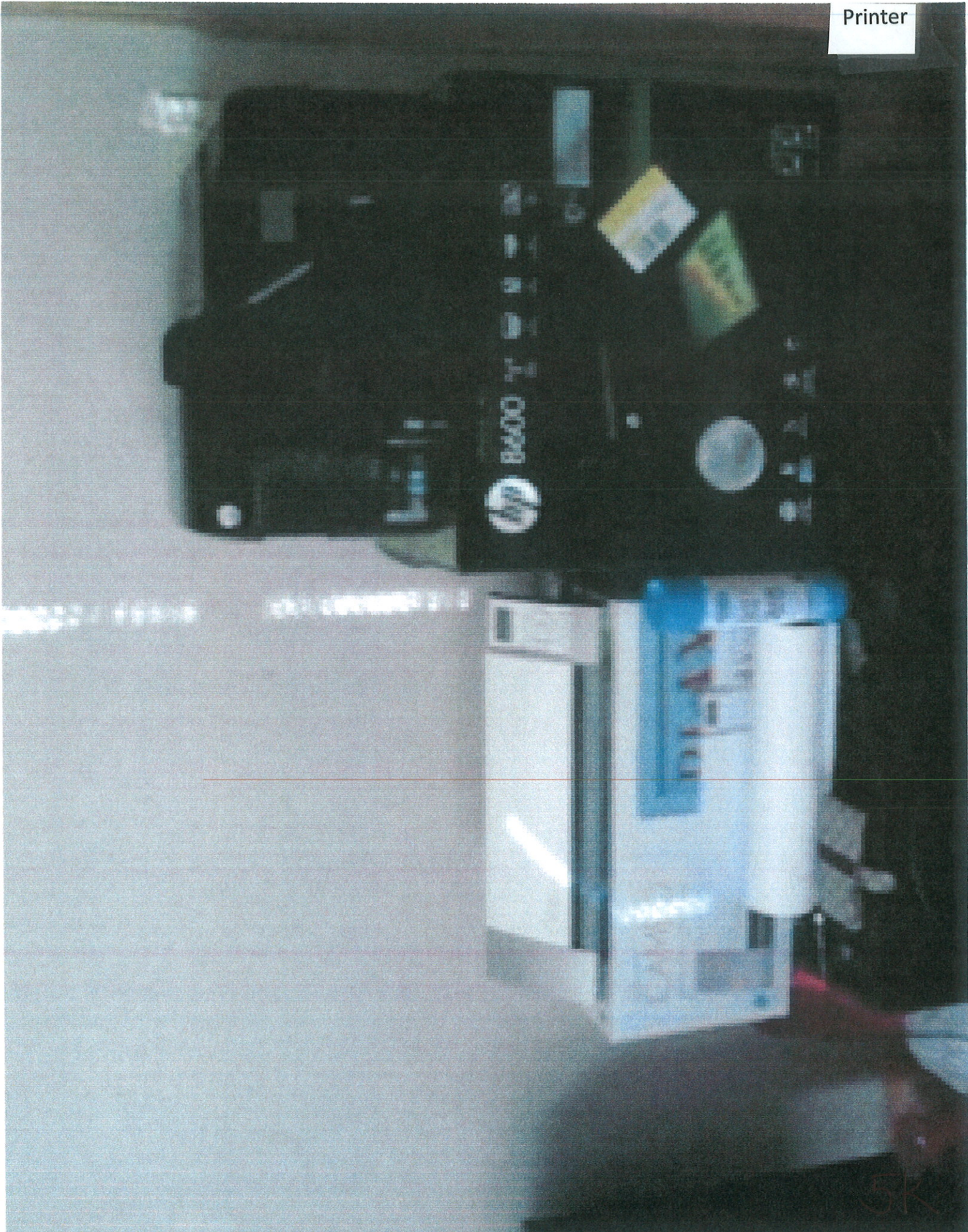
January 21, 2014

- Fort Smith City Limits
- Building Footprints
- Zoning
- Subdivisions

5

T-Shirt Press





Memo

To: City Planning Commission

From: Planning Staff

Date: January 27th, 2014

Re: Variance #7-2-14 - A request by Al Prieur, agent for Bear Creek Leasing Co., Inc, for Board of Zoning Adjustment consideration of a zoning variance request from 50 feet to 25 feet exterior side yard setback adjacent to South "D" and South "E" Streets located at 506 South 6th Street

LOT LOCATION AND SIZE

The subject property is between South 6th Street and South 5th Street and South E Street and South D Street. The tract contains an area of 2 acres with approximately 300 feet of street frontage along all four of the surrounding streets.

EXISTING ZONING

The existing zoning on this tract is Industrial Moderate (I-2).
Characteristics of this zone are as follows:

Purpose:

To provide for industrial land uses which can be operated in a clean and quiet manner that shall not be obnoxious to adjacent land uses, and shall have relatively limited environmental impacts. The land uses within an I-2 zoning district are primarily contained indoors and have heavier traffic generation than Industrial-1 uses. I-2 zoning is appropriate within the Industry classification of the Master Land Use Plan.

Permitted Uses:

Auto and boat related businesses, a variety of retail businesses, offices, animal and pet services, manufacturing and commercial communication towers are examples of permitted uses.

Conditional Uses:

Truck stop, pet cemetery, animal food processing, bus station, sports complex and police station are examples of uses permitted as conditional uses.

6A

Area and Bulk Regulations:

Minimum Lot Size – 20,000 square feet

Maximum Height - 45 feet (1+1)

Maximum Lot Coverage - 60%

Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 10 acres

Existing District (By Extension) – 20,000 square feet

Minimum Lot Width – 100 feet

Front Yard Setback - 50 feet

Side Yard on Street Side of Corner Lot - 50 feet

Side Yard Setback – 25 feet

Rear Yard Setback - 20 feet

Side/Rear (adjoining SF Residential District/Development) – 100 feet (may be reduced to 60 feet with Planning Commission approval of screening and/or landscaping through the Development Plan approval process)

Minimum building separation – to be determined by current City building and fire code.

Required street access – Major Arterial or higher

SURROUNDING ZONING AND LAND USE

The areas to the east, and south are zoned Industrial Light (I-1) and are developed as warehouses and industrial uses.

The area to the north is zoned Industrial Light (I-1) and is developed as a cemetery.

The area to the west is zoned Industrial Moderate (I-2) and is undeveloped.

MASTER STREET PLAN CLASSIFICATION

The Master Street Plan classifies all of the surrounding streets as local roads.

LAND USE PLAN COMPLIANCE

The *Unified Development Ordinance* currently classifies the site as Mixed Use Employment Land Use Classification. This classification is intended to provide for a dense, compatible mix of retail, residential, employment and production activities designed for all modes of transportation. Approval of the variance will not conflict with the goals and objectives of the Unified Development Ordinance.

REQUESTED VARIANCE

Approval of the variance will allow for an expansion of the existing warehouse which currently encroaches the exterior side yard setbacks.

APPLICANT HARDSHIP

The applicant states that without approval of the variance, the proposed addition will not align with the existing building. The resulting offset will create a hardship with the company's storage process.

6B

STAFF COMMENTS AND RECOMMENDATIONS

In 2007, the BZA approved a rear-yard setback to allow the development of the existing building. With that variance application, the applicant stated that a future building addition was also planned. Approval of the variance will allow the proposed addition to maintain the same exterior side-yard setback adjacent to South D and South E Streets as the existing building.

If the BZA approves this variance, staff requests that it substantiate its reason for approval in accordance with Section 27-337-2 of the Unified Development Ordinance, which permits the granting of a variance only when it is demonstrated that such action is in keeping with the spirit and intent of the provisions of the zoning chapter.

6C

Var # 7-2-14

APPLICATION FOR VARIANCE

Notice is hereby given that the undersigned, as owner(s) of the following property in the Fort Smith District of Sebastian County, Arkansas, to-wit: (Legal Description)

BLOCK 575 RESERVE ADDITION

Address of property 506 SOUNT 6TH STREET, Existing or Proposed

Zoning Classification INDUSTRIAL - 2 (I-2), has filed with the Planning Department a written application pursuant to Article 5-6 of Ordinance 2324 of the City of Fort Smith, Arkansas, to secure a variance from the literal provisions of the zoning ordinance as follows:

Office Use Only-List the Specific Variance Requested and Applicant Stated Hardship

FROM

TO

- | | | | |
|----------------|---|----------------|--|
| _____ | - | _____ | Front Yard Setback or Minimum Distance from Right-of-Way |
| <u>50 FEET</u> | - | <u>25 FEET</u> | Exterior Side Yard Setback |
| _____ | - | _____ | Interior Side Yard Setback |
| _____ | - | _____ | Rear Yard Setback |
| _____ | - | _____ | Maximum Height of Structure |
| _____ | - | _____ | Minimum Distance Between Structures on the Same Lot |
| _____ | - | _____ | Minimum Lot Area (Square Feet) |
| _____ | - | _____ | Minimum Lot Frontage |
| _____ | - | _____ | Maximum Size of a Sign |
| _____ | - | _____ | Other: _____ |

The undersigned will present said application to the Board of Zoning Adjustment at the first regular City Planning Commission meeting following the expiration of seven (7) days from the date of this publication, at which meeting the Board of Zoning Adjustment will conduct a public hearing on

6 D

said application. All interested persons are invited to attend and are entitled to be heard. This notice is published this _____ day of _____, 20____.

Signed:

ALVIN L. PRIEUR, JR., PE

Owner or Agent Name (*please print*)

479-651-7920

Owner or Agent Phone Number

P O BOX 1689

VAN BUREN, AR 72957

Owner or Agent Mailing Address

Owner

or
Agent

Variance # _____

6E

VARIANCE INFORMATION FORM

The following paragraph (Section 27-337-2) of the Fort Smith Unified Development Ordinance defines the criteria for granting a variance:

The Board of Zoning Adjustment shall hear requests for variances from the literal provision of the zoning chapter in instances where strict enforcement of the zoning chapter would cause undue hardship due to circumstances unique to the individual property under consideration, and shall grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the zoning chapter. The Board of Zoning Adjustment shall not permit, as a variance, any use in a zone that is not permitted under the chapter. The Board of Zoning Adjustment may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

1. To aid the Board of Zoning Adjustment in arriving at a decision on your application, please note the lot information requested and check the appropriate answer to each of the questions that follow.

Yes

No

- | | | |
|---------------|---------------|--|
| <u>X</u> | <u> </u> | Is this variance needed because of previous actions taken by yourself? |
| <u> </u> | <u>X</u> | Is this variance needed because of previous actions taken by a prior owner? |
| <u>X</u> | <u> </u> | A zoning hardship is present only when a property has no reasonable use without a variance. Do you have use of your property without a variance? |
| <u>X</u> | <u> </u> | Is the variance needed due to the unique circumstances of the property (such as lot area, lot width, setbacks, yard requirements, or building height)? If yes, please explain on the following page. |
| <u> </u> | <u>X</u> | Is the lot of an odd or unusual shape? |
| <u> </u> | <u>X</u> | Does the lot have "radical" topography (steep, unbuildable slopes - streams or bodies of water - unstable or eroded area)? |
| <u> </u> | <u>X</u> | Does the lot contain required easements other than those that might be located on its perimeter? |
| <u> </u> | <u>X</u> | Is any part of the lot in a flood plain or flood way? |
| <u> </u> | <u>X</u> | Is the lot smaller than minimum lot area or minimum frontage for its zoning classification? |
| <u>X</u> | <u> </u> | Is the lot developed with structures in violation of current zoning requirements? |
| <u> </u> | <u>X</u> | Does the lot front any street classified as an arterial or collector on the Master Street Plan? |

6 F

Explanation of question #4

The existing building was built with the plan to expand in the future. The alley would need to be closed to expand the building over the area that was occupied by the alley. The property does need the variance due to this unique circumstance. The existing structure was built with setbacks of 25 feet. With the combination of several Industrial Zones the setback changed to 50 feet. When this happened the proposed building will not line up with the existing building. The proposed building was to be extended over the alley and match up with the existing structure.

2. Describe how the strict enforcement of the zoning code causes an undue hardship for your project.

The strict enforcement of the zoning setbacks will keep the new building from lining up with the existing structure. To the best of my knowledge, no one in this company was aware of the setback change until planning was started on the new building and the alley closing. The connection of the two buildings will allow the storage of more materials inside instead of outside. The fact that the building's exterior walls will be offset will create a hardship in having to work around the offsets instead of having a straight wall to work with in the storage process.

3. List any special circumstances which exist that have not been created by the owner/applicant and do not apply to other properties in your area.

The change from a 25' setback to a 50' setback is a condition which was not created by the owner/applicant.

A handwritten signature in black ink, appearing to be 'L. R. J.' or similar, written in a cursive style.Handwritten initials 'BG' in black ink, located in the bottom right corner of the page.

AUTHORIZATION OF AGENT

If an agent (i.e., contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

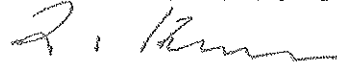
We the undersigned, being owners of real property, and requesting a variance by application do hereby authorize ALVIN L. PRIEUR, JR., PE to act as our agent in the matter.
(Print Name of Agent)

(Type or clearly print)

NAMES OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

1. BEAR CREEK LEASING CO., INC.



2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

12. _____

13. _____

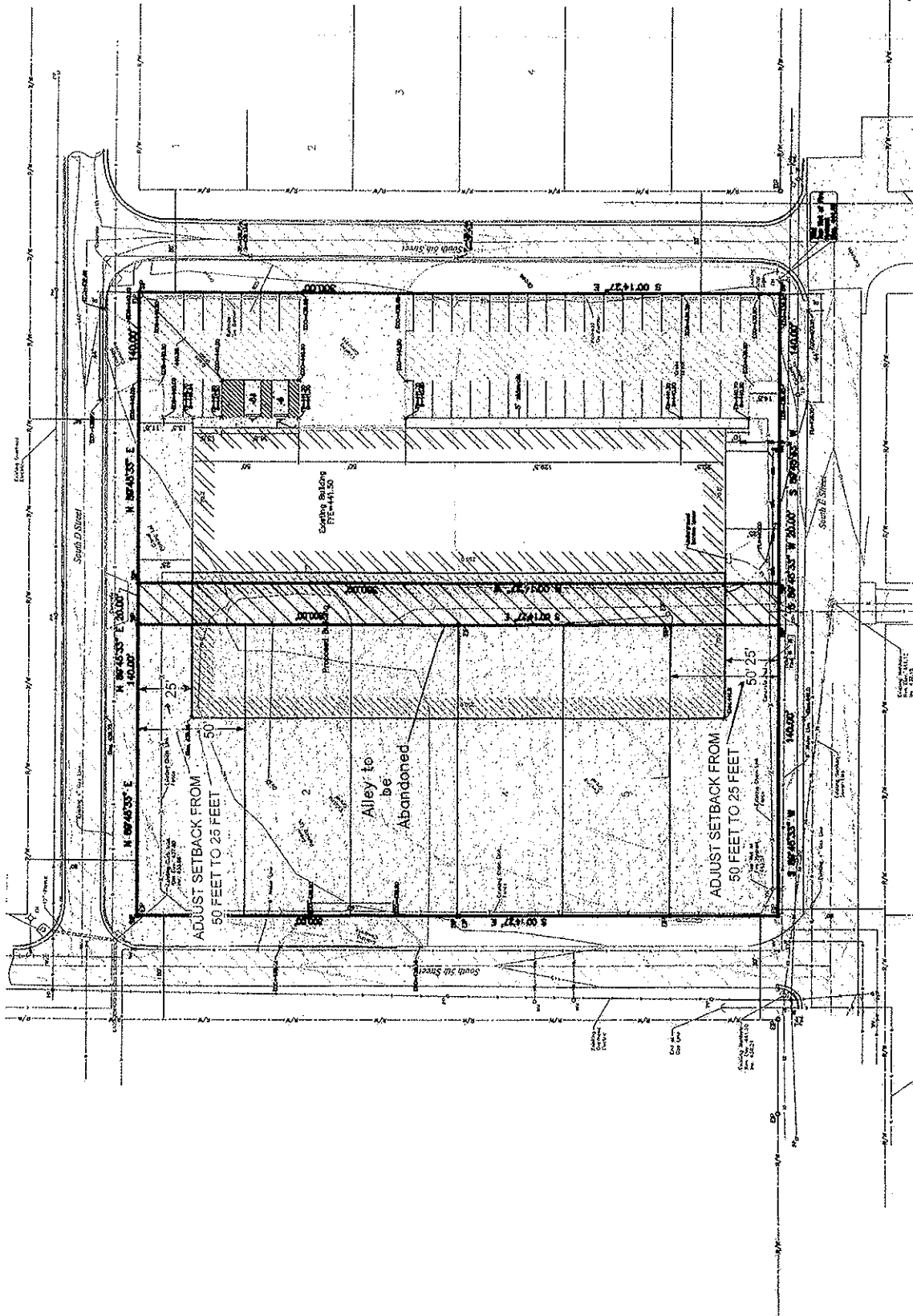
This form is necessary only when the person representing this request does not own all the property.

6H

Variance #7-2-14: From 50' to 25' exterior side yard setback adjacent to South D & South E 506 South 6th Street

179





SETBACK VARIANCE EXHIBIT
 Alley Abandonment Exhibit
 Boyd Metals
 Block 575 Reserve Addition

November 2013
 MICKLE WAGNER
 Engineers-Consultants-Surveyors
 1841 Comp. Co. Ave.
 602 14-444

65

Memo

To: City Planning Commission

From: Planning Staff

Date: January 27, 2014

Re: Variance #8-2-14 - A request by Chris Trager, agent for Clear Channel Outdoor, for Board of Zoning Adjustment consideration of a zoning variance request from 25 feet to 22 feet front yard setback located at 1100 South "D" Street

LOT LOCATION AND SIZE

The subject property is on the south side of South "D" Street where South 11th Street terminates. The tract contains an area of 1.38 acres with approximately 185 feet of street frontage along South "D" Street.

EXISTING ZONING

The existing zoning on this tract is Industrial Light (I-1).
Characteristics of this zone are as follows:

Purpose:

To provide for a mixture of light manufacturing, office park, research and development, and limited retail/service retail land uses in an attractive, business park setting. The Industrial Light district may be used as a zoning buffer between mixed uses, commercial uses and heavier industrial uses. The I-1 zoning district is appropriate with the Office, Research, and Light Industrial (ORLI) and Industry classifications of the Master Land Use Plan.

Permitted Uses:

Auto and boat related businesses, a wide variety of retail businesses, indoor flea market, pawnshop, financial services, offices, bar or tavern, restaurant, animal and pet services, manufacturing and commercial communication towers are examples of permitted uses.

Conditional Uses:

Homeless shelter, truck stop, outdoor flea market, beer garden, restaurant with outdoor dining, pet cemetery, animal food processing, petroleum distribution facility, bus station, recycling center, sports complex, educational facilities and police station are examples of uses permitted as conditional uses.

Area and Bulk Regulations:

Minimum Lot Size – 20,000 square feet
Maximum Height - 45 feet (1+1)
Maximum Lot Coverage - 75%
Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 2 acres
Existing District (By Extension) – 20,000 square feet
Minimum Lot Width – 100 feet
Front Yard Setback - 25 feet
Side Yard on Street Side of Corner Lot - 15 feet
Side Yard Setback – 10 feet
Rear Yard Setback - 10 feet
Side/Rear (adjoining SF Residential District/Development) – 100 feet (may be reduced to 60 feet with Planning Commission approval of screening and/or landscaping through the Development Plan approval process)
Minimum building separation – to be determined by current City building and fire code.
Required street access – Major Arterial or higher

SURROUNDING ZONING AND LAND USE

The areas to the north are zoned Industrial-Light (I-1) and are developed as Hiland Dairy and Glover's Machine Works.

The areas to the east are zoned Industrial-Light (I-1) and are developed as vacant retail business.

The areas to the south are zoned Industrial-Light (I-1) and are developed as pawn shop.

The areas to the west are zoned Industrial-Light (I-1) and are developed as parking lot for Hiland Dairy.

MASTER STREET PLAN CLASSIFICATION

The Master Street Plan classifies South "D" Street as a Local Road.

LAND USE PLAN COMPLIANCE

The *Unified Development Ordinance* currently classifies the site as Mixed Use Employment. This classification is intended to provide for a dense, compatible mix of retail, residential, employment and production activities designed for all modes of transportation. Approval of the variance will not conflict with the goals and objectives of the Unified Development Ordinance.

REQUESTED VARIANCE

Approval of the variance from 25 feet to 22 feet front yard setback will allow an existing business to add a tower façade to the front of the structure.

APPLICANT HARDSHIP

The applicant states that the strict enforcement of the zoning code will prohibit the facility from presenting a proper corporate image.

7B

STAFF COMMENTS AND RECOMMENDATIONS

In staff opinion, the setback variance is minor and will have no effect on surrounding properties.

If the BZA approves this variance, staff requests that it substantiate its reason for approval in accordance with Section 27-337-2 of the Unified Development Ordinance, which permits the granting of a variance only when it is demonstrated that such action is in keeping with the spirit and intent of the provisions of the zoning chapter.

Var #8-2-14

APPLICATION FOR VARIANCE

Notice is hereby given that the undersigned, as owner(s) of the following property in the Fort Smith District of Sebastian County, Arkansas, to-wit: (Legal Description)

Address of property Clear Channel Outdoor, Inc.
1100 South D Street, Ft. Smith 72901 Existing or Proposed

Zoning Classification Industrial 1, has filed with the Planning Department a written application pursuant to Article 5-6 of Ordinance 2324 of the City of Fort Smith, Arkansas, to secure a variance from the literal provisions of the zoning ordinance as follows:

Office Use Only-List the Specific Variance Requested and Applicant Stated Hardship

<u>FROM</u>		<u>TO</u>	
<u>25</u>	-	<u>22</u>	Front Yard Setback or Minimum Distance from Right-of-Way
_____	-	_____	Exterior Side Yard Setback
_____	-	_____	Interior Side Yard Setback
_____	-	_____	Rear Yard Setback
_____	-	_____	Maximum Height of Structure
_____	-	_____	Minimum Distance Between Structures on the Same Lot
_____	-	_____	Minimum Lot Area (Square Feet)
_____	-	_____	Minimum Lot Frontage
_____	-	_____	Maximum Size of a Sign
_____	-	_____	Other: _____

The undersigned will present said application to the Board of Zoning Adjustment at the first regular City Planning Commission meeting following the expiration of seven (7) days from the date of this publication, at which meeting the Board of Zoning Adjustment will conduct a public hearing on

70

said application. All interested persons are invited to attend and are entitled to be heard. This notice is published this 22nd day of January, 2014.

Signed:

Chris Trager
Owner or Agent Name (please print)

479-883-9681
Owner or Agent Phone Number
Turn Key Construction Mgt.
P.O. Box 11124
Fort Smith, Ar. 72917
Owner or Agent Mailing Address

Owner
or
Chris Trager
Agent

Variance # _____

7E

VARIANCE INFORMATION FORM

The following paragraph (Section 27-337-2) of the Fort Smith Unified Development Ordinance defines the criteria for granting a variance:

The Board of Zoning Adjustment shall hear requests for variances from the literal provision of the zoning chapter in instances where strict enforcement of the zoning chapter would cause undue hardship due to circumstances unique to the individual property under consideration, and shall grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the zoning chapter. The Board of Zoning Adjustment shall not permit, as a variance, any use in a zone that is not permitted under the chapter. The Board of Zoning Adjustment may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

1. To aid the Board of Zoning Adjustment in arriving at a decision on your application, please note the lot information requested and check the appropriate answer to each of the questions that follow.

<u>Yes</u>	<u>No</u>	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is this variance needed because of previous actions taken by yourself?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is this variance needed because of previous actions taken by a prior owner?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	A zoning hardship is present only when a property has no reasonable use without a variance. Do you have use of your property without a variance?
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Is the variance needed due to the unique circumstances of the property (such as lot area, lot width, setbacks, yard requirements, or building height)? If yes, please explain on the following page.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is the lot of an odd or unusual shape?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Does the lot have "radical" topography (steep, unbuildable slopes - streams or bodies of water - unstable or eroded area)?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Does the lot contain required easements other than those that might be located on its perimeter?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is any part of the lot in a flood plain or flood way?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is the lot smaller than minimum lot area or minimum frontage for its zoning classification?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Is the lot developed with structures in violation of current zoning requirements?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Does the lot front any street classified as an arterial or collector on the Master Street Plan?

7F

Explanation of question #4 (if applicable)

The tower facade will be located on the street side of the building which has a 25' easement requirement. When constructed as planned, the structure will encroach upon the easement approx. 3', leaving only 22' to the property line.

2. Describe how the strict enforcement of the zoning code causes an undue hardship for your project:

The renovation purpose is, in part, to alter the appearance of the property so that it conforms to the corporate image. The proposed facade serves this purpose as an important feature.

3. List any special circumstances/conditions which exist that have not been created by the owner/applicant and do not apply to other properties in your area:

AUTHORIZATION OF AGENT

If an agent (i.e., contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, and requesting a variance by application do hereby authorize Chris Trager to act as our agent in the matter.
(Print Name of Agent)

(Type or clearly print)

NAMES OF ALL OWNERS.

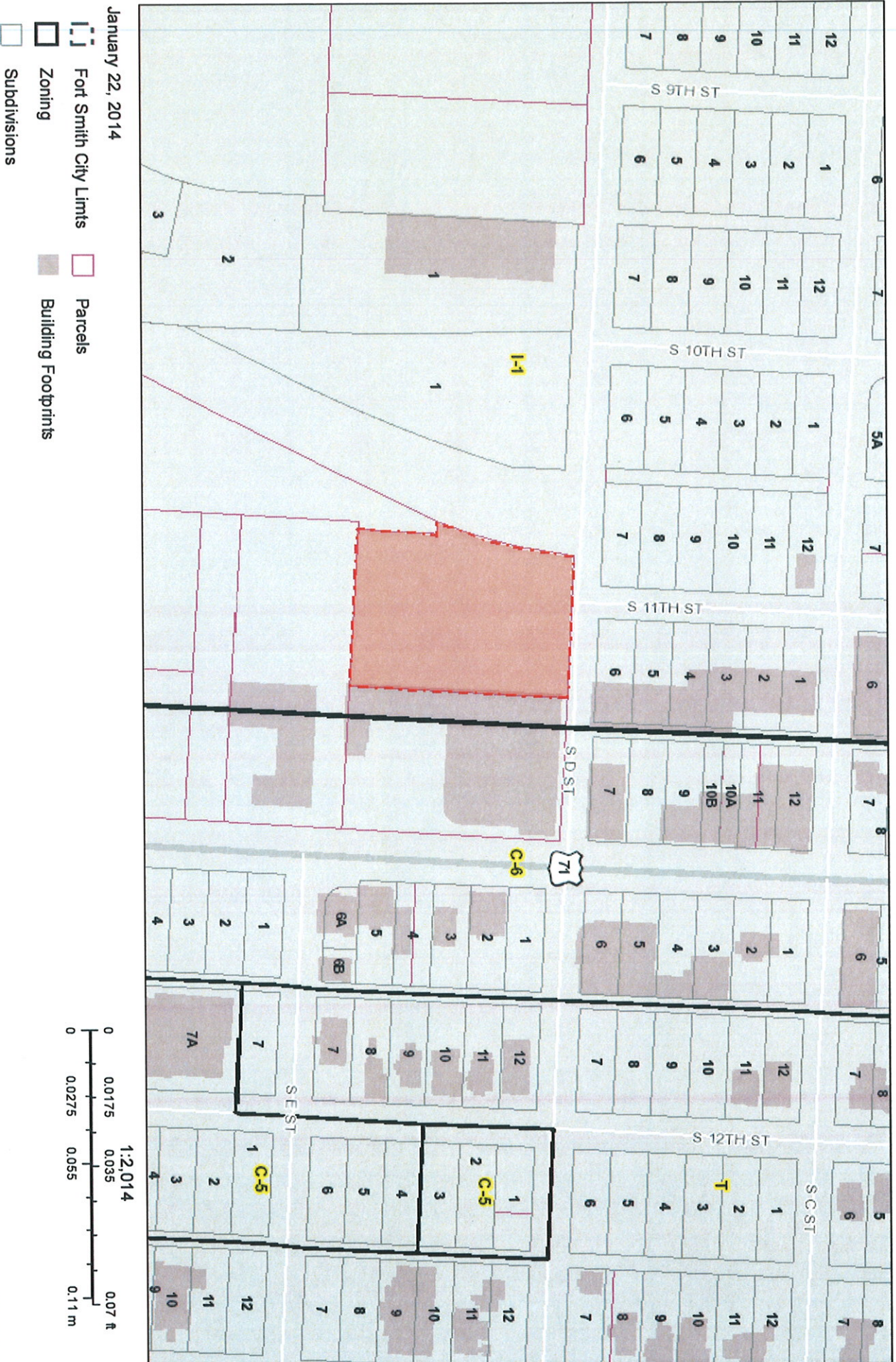
SIGNATURE OF ALL OWNERS.

- | | |
|---|--------------------------|
| 1. <u>Roger Dickerson - Clear Channel / Outdoor</u> | <u>[Signature] VP/6M</u> |
| 2. _____ | _____ |
| 3. _____ | _____ |
| 4. _____ | _____ |
| 5. _____ | _____ |
| 6. _____ | _____ |
| 7. _____ | _____ |
| 8. _____ | _____ |
| 9. _____ | _____ |
| 10. _____ | _____ |
| 11. _____ | _____ |
| 12. _____ | _____ |
| 13. _____ | _____ |

This form is necessary only when the person representing this request does not own all the property.

Variance #8-2-14: From 25' to 22' front yard setback 1100 South "D" Street

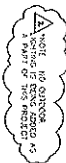
FT





Proposed Fort Smith location

75



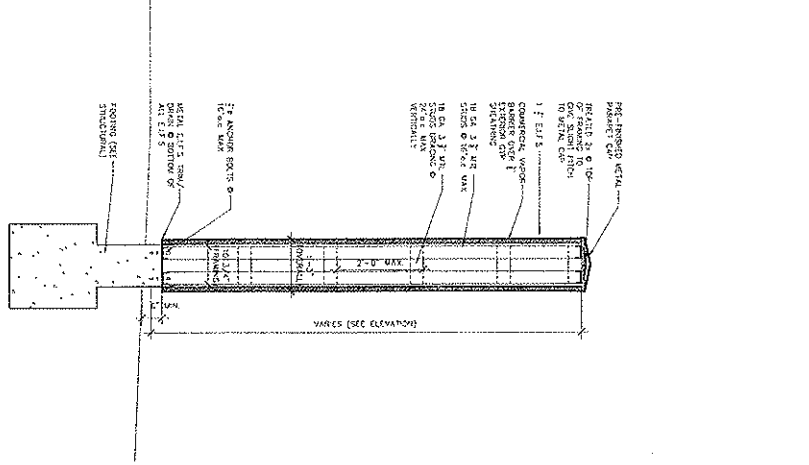
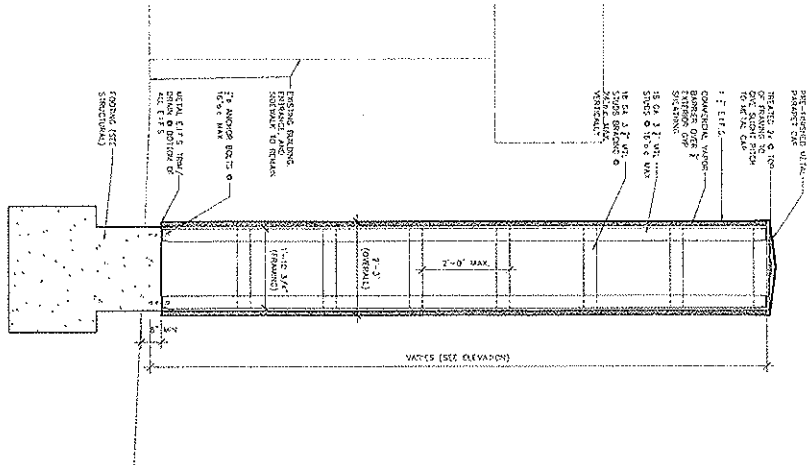
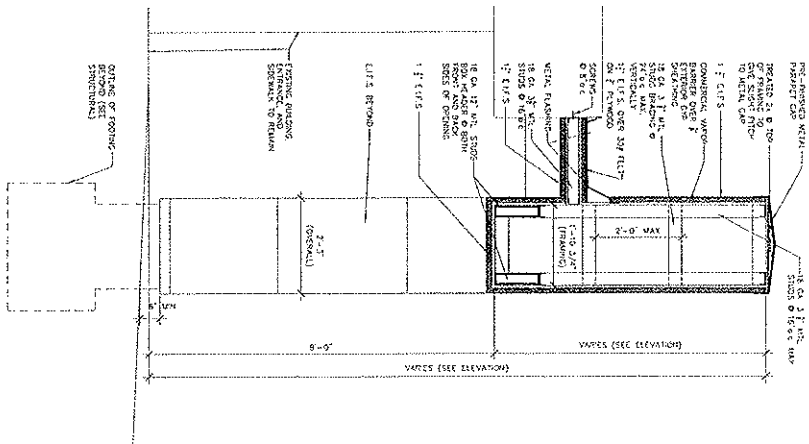
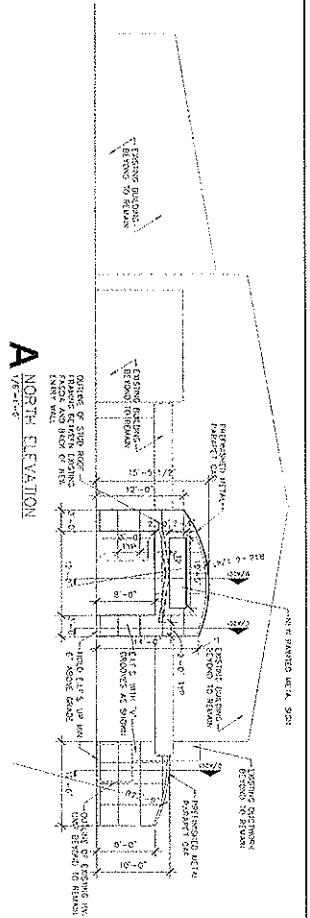
753-532-6032 ph 25079 Brockmead Road
www.rickardslary.net/cdof/room Shoppe Point, OK 74066



TURN KEY
FRANCHISE DEVELOPMENT & MANAGEMENT
479-709-0044

C100

7k



A201



MICHAEL ALLEN RILEY
135213
www.michaelallenriley.com

Clear Channel Interior Remodel
1100 South D Street
Fort Smith, AR 72901

TURN KEY
479-709-0044

76